ONLYIAS
BY PHYSICS WALLAH

UPSC WALLAH

INDIAN POLITY
(PART I)

COMPREHENSIVE LEARNING SERIES FOR
PRELIMS AND MAINS

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- Thinking Points in and as ‘Ignite Your Mind’
- Updated with latest current affairs and data

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Historical Underpinnings

1

INTRODUCTION

India is the world's largest democracy and seventh-largest in terms of geographical area. It is vibrant mosaic of diverse cultures and religions. Its Constitution, enacted in 1950, embodies freedom, justice, and democratic principles, drawing from ancient Indian governance, colonial experiences, and the freedom struggle. This remarkable journey harmonizes traditional values with modern principles, and mirrors India's rich culture and guiding its inclusive and progressive journey, marking a collaborative triumph in the spirit of a newly independent nation.

The evolution of the Indian Constitution is a fascinating journey through India's complex history, reflecting its social, political, and cultural transformations. This process began long before the actual drafting of the Constitution in 1946.

EVOLUTION OF THE CONSTITUTION

Our present-day India is a **federal state with its entities divided among states and union territories.** It follows the **system of government, which is a parliamentary democracy based on the Westminster model** (Westminster is a place in London where the British Parliament is located).

The foundation stone for the present federal state was laid with the advent of the Britishers in India. The Britishers came to India as traders, but with time, they gained political influence in the Indian subcontinent. This changed their presence from merchants and traders to administrators. They introduced changes through rules and regulations to establish their administration. The objective of these changes was to serve the British imperial ideology, but unintentionally, they infused elements of the modern State into India's political system.

There were certain events in British rule that laid down the legal framework for the organization and functioning of government and administration in British India.

The Acts Enacted By The British are Explained Here in Chronological Order

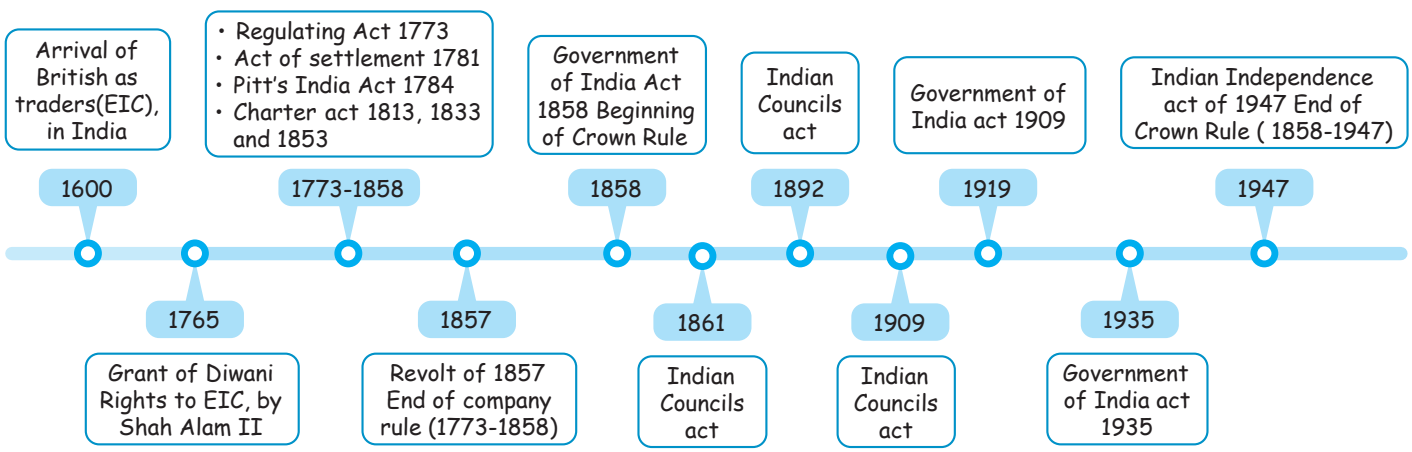


Fig. 1.1: Evolution of Constitutionalism in India

REGULATING ACT OF 1773 (GOVERNOR-GENERAL WARREN HASTINGS)

Background: A dual system of government was introduced after the Diwani of Bengal, Bihar and Orissa was granted, where the Company had the authority without any

When the British came to India during the 1600's, in the form of merely a trading Company, it had only the right of trading in India under a charter granted by Queen Elizabeth I.

However, in 1765, the Company obtained the '***diwani***' rights (over revenue and civil justice) of Bengal, Bihar and Orissa from the Mughal Emperor, Shah Alam II, after their victory in the Battle of Buxar (1764).

responsibility, and its Indian counterpart had all the responsibility without any authority. This system had the following characteristics-

1. Corruption among servants of the Company
2. Oppression of peasantry with excessive revenue collection and
3. The bankruptcy of the Company, while the servants flourished.

The British government decided to regulate the Company through this act.

Salient Features of the Regulating Act of 1773

- **Establishment of a Governor-General and Council:** The Act created a centralized administration in Bengal by establishing a Governor-General and Council in Calcutta. The council consisted of four members. This body was granted supervisory powers over the presidencies of Madras and Bombay, consolidating British authority over the East India Company's territories in India.
- **Creation of a Supreme Court:** The Act established a Supreme Court in Calcutta, comprising 1 chief justice and 3 other judges. This court held jurisdiction over all British subjects in Bengal, both civil and criminal.
- **Regulation of the East India Company's Dividends and Governance:** The Act limited the East India Company's dividends to 6% and restricted the terms of the Court of Directors to four years. This aimed to curb the Company's financial excesses and increase oversight over its governance.
- **Prohibition of Bribery and Private Trade:** The Act prohibited East India Company employees from engaging in private trade or accepting bribes from natives. This aimed to reduce corruption and promote ethical conduct among the Company's representatives.
- **Supervision of Company's Finances:** The Act granted the British government the right to inspect the East India Company's financial records. This provided greater transparency and accountability for the Company's financial dealings.
- **Supervision over the Court of Directors:** The Court of Directors was supposed to report on its revenue, civil, and military affairs in India to the British Government.

Significance

- It was this Act that worked as the **first step** taken by Britain **to control and regulate the affairs of the East India Company** and its colony - India.
- For the **first time,** this Act **recognized the political and administrative functions** of the Company. It laid the foundations of centralized administration in India;

Limitations

- **Limited Scope of Reform:** The Regulating Act primarily focused on regulating the East India Company's finances and administration. It did not address the underlying causes of India's economic and social problems, such as land revenue systems and peasant exploitation.
- **Failure to Prevent Future Conflicts:** The Act did not prevent future conflicts between the East India Company and Indian rulers. These tensions ultimately led to the British conquest of India in the 19th century.

AMENDING ACT OF 1781 (GOVERNOR-GENERAL WARREN HASTINGS)

Background: To rectify the defects of the Regulating Act of 1773, the British Parliament passed the Act of Settlement, known as the Amending Act of 1781.

Key Provisions of the Amending Act of 1781

1. **Demarcation of Powers between the Supreme Court and the Governor-General in Council:** The Act clarified the relationship between the Supreme Court and the Governor-General in Council, resolving the jurisdictional disputes that had arisen under the Regulating Act. It exempted the Governor-General, Council members, and Company servants from the Supreme Court's jurisdiction in cases arising from their official duties.
2. **Establishment of Sadar Adalat Courts:** The Act recognised Sadar Adalat Courts, in Bengal, Madras, and Bombay as Provincial Adalats, authorizing the Governor-General and the council to hear and determine the appeals and references of the mufassil courts in civil matters. These courts were intended to provide an efficient and accessible system of justice for Indians. The courts were to administer the personal law of the defendants.
3. **Regulation of Revenue Collection:** The Act introduced regulations to improve the system of revenue collection in Bengal, which aimed to prevent corruption and ensure fair treatment of zamindars (landowners).
4. **Establishment of a Board of Revenue:** The Act established a Board of Revenue in Calcutta to oversee revenue collection and land administration in Bengal.
5. **Appeal Process:** The act established that the appeals from provincial courts were to be received by the Governor General-in-Council and not the Supreme Court.

Significance: It clarified the division of powers between the Supreme Court and the Governor-General in Council, recognised provincial courts, introduced regulations

for revenue collection, and reformed the system of civil service appointments—these changes aimed to address the shortcomings of the Regulating Act and improve the administration of British India.

Limitations: It did not fully address the underlying causes of India's economic and social problems. The East India Company's commercial interests and the growing British imperial ambitions continued to shape the course of British rule in India.

PITT'S INDIA ACT OF 1784 (GOVERNOR-GENERAL: WARREN HASTINGS)

Background: The company continued to be plagued by corruption and mismanagement, and its financial situation deteriorated further. In addition, the act did not effectively address the growing tensions between the British and Indian rulers.

In response to these problems, William Pitt the youngest British Prime Minister, introduced the Pitt's India Act of 1784. This act aimed to strengthen the British government's control over the East India Company and improve the administration of British India.

Some of the key features are:

- It distinguished between the commercial and political functions of the Company.
- It allowed the Court of Directors to manage the commercial affairs, but created a new body called Board of Control to manage the political affairs. Thus, it established a system of double government.
- The Pitt's India Act gave the British government a large measure of control over the Company's affairs. In fact, the Company became a subordinate department of the State. The Company's territories in India were termed 'British possessions'.
- The government's control over the Company's affairs was greatly extended. A Board of Control consisting of the chancellor of exchequer, a secretary of state, and four members of the Privy Council (to be appointed by the Crown) were to exercise control over the Company's civil, military, and revenue affairs. All dispatches were to be approved by the board. Thus, a dual system of control was set up.
- In India, the Governor-General was to have a council of three members (including the commander-in-chief) and the presidencies of Bombay and Madras were made subordinate to the Governor-General.
- A general prohibition was placed on aggressive wars and treaties (breached often).

Significance

- The Company's territories in India were, for the first time, called the **'British possessions in India'**
- The British Government was presented with supreme control over the Company's affairs and its administration in India, and the Company became a subordinate department of the state.

Limitations

- The act did not adequately address the underlying causes of India's economic and social problems, such as poverty and land inequality.
- The act did not prevent future conflicts between the British and Indian rulers, which ultimately led to the British conquest of India.
- The act did not provide for adequate representation of Indian interests in the administration of British India.

ACT OF 1786 (GOVERNOR-GENERAL: CORNWALLIS)

Background: In 1786, when Cornwallis was appointed as the Governor-General of Bengal, he had placed two demands before the British Government:

- In special cases, he should be **given overriding powers** over the council's decisions.
- He should also be the Commander-in-Chief.

Features: Accordingly, the Act of 1786 fulfilled both of his demands in its provisions. Cornwallis had the powers of both the Governor-General and the Commander-in-Chief.

CHARTER ACT OF 1793 (GOVERNOR-GENERAL: JOHN SHORE)

Background: This act was passed against the backdrop of several significant developments in India, including

- The growing political and economic dominance of the East India Company in India.
- There were increasing tensions between the British and Indian rulers.
- The financial difficulties faced by the East India Company.

This Act Had The Following Features

- It **extended the Company's Charter** to trade with India (its trade monopoly) for the next **20 years.**
- It extended the **overriding powers** given to the Governor-General over his council under the Act of 1786 to all the future Governor-Generals and Governors of Presidencies.
- The **Commander-in-chief was not to be a member of the council** unless he was so appointed.

- Members of the **Board of Control and their staff** were to be **paid out of the Indian revenues,** which continued **up to 1919.**
- **Royal approval** was mandated for the **appointment** of the **Governor-General, the Governors,** and the **Commander-in-Chief.**
- The company's senior officials could not leave the country without permission; doing so was treated as a resignation.
- The Company was empowered to give licenses (known as 'privilege' or 'country trade') to individuals and the Company's employees. These licenses paved the way for opium shipments to China.
- The **Company** was to pay **5 lakh pounds annually to the British government** from the Indian revenues after paying the necessary expenses.
- The **revenue administration and judiciary functions** were **separated,** and subsequently, **Maal Adalats (revenue courts) disappeared.**

Significance

- **Centralization of Power:** The act centralized power under the Governor-General of Bengal, granting him greater authority over the presidencies of Madras and Bombay. This centralization aimed to improve coordination and efficiency in the administration of British India.
- **Reorganization of Judiciary:** The act reorganized the judiciary, separating revenue administration from judicial functions. This separation aimed to improve the impartiality and effectiveness of the judicial system.
- **Regulation of Trade:** The company's trade monopoly in India was extended for another 20 years.

CHARTER ACT OF 1813 (GOVERNOR-GENERAL: HASTINGS)

Background: Business interests in England were pressing for an end to the Company's monopoly over Indian trade due to:

- Emerging spirit of *laissez-faire.*
- Napoleon enforced the closing of the European ports for Britain under the continental system.

Some Key Features of The Charter Act of 1813 are

- **End of the East India Company's Monopoly:** The act abolished the East India Company's monopoly on trade with India, except for trade in tea and opium with China. This opened up trade opportunities for British merchants and other European traders, promoting economic competition and diversification in India.
- **Promotion of Education and Knowledge:** The act allocated 1 lakh rupees annually for the promotion of education and knowledge in India. This funding aimed to establish schools, colleges, and libraries, fostering intellectual growth and development in the country.
- **Religious Freedom and Missionary Activities:** The act granted Christian missionaries the right to propagate their faith in India. This provision, while controversial, reflected a growing interest in religious conversion and cultural influence in British India.
- **Strengthening of Judiciary:** The act empowered the Supreme Court of Calcutta to extend its jurisdiction over all British subjects, including those residing in the interior of India. This strengthened the judicial system and provided greater access to justice for British subjects.
- **Explicit Recognition of British Territories in India:** The Company was to retain the possession of territories and the revenue for 20 years more without prejudice to the sovereignty of the Crown. The regulations made by the Councils of Madras, Bombay, and Calcutta were now required to be laid before the British Parliament. The Constitutional position of the British territories in India was thus explicitly defined for the first time.

Significance

As a result of this act, more Englishmen came to India and European culture began to flow into India. The Company was made more subservient to the Crown and Parliament. The value of trade tremendously increased. Indian industries received a set back.

Limitation

Limited Scope of Economic Liberalization: While the act opened up trade opportunities, it did not fully dismantle the East India Company's economic dominance. The Company retained its control over key sectors like salt and opium, restricting true economic liberalization.

CHARTER ACT OF 1833 (GOVERNOR-GENERAL OF INDIA: WILLIAM BENTINCK)

Background: The British and other European trading companies were lobbying to completely remove the monopoly granted to the East India Company. The Company also had much more territory under its control. Hence to regulate its power, Charter Act 1833 was enacted.

Some of The Key Features Are

- The lease of 20 years to the Company was further extended. Territories of India were to be governed in the name of the Crown.
- The Company's monopoly of trade with China was abolished.

- All restrictions on European immigration and the acquisition of property in India were lifted. Thus, the way was paved for the wholesale European colonization of India.
- **In India, a financial, legislative, and administrative centralization of the government was envisaged:**
  - The Governor-General was given the power to superintend, control, and direct all civil and military affairs of the Company.
  - Bengal, Madras, Bombay, and all other territories were placed under complete control of the Governor-General.
  - All revenues were to be raised under the authority of the Governor-General, who would have complete control over the expenditures, too.
  - The Governments of Madras and Bombay were drastically deprived of their legislative powers and left with a right to propose to the Governor-General the projects of law which they thought to be expedient.
- A law member was added to the Governor-General's council for professional advice on law-making.
- Indian laws were to be codified and consolidated.
- No Indian citizen was to be denied employment under the Company on the basis of religion, colour, birth, descent, etc. (Although the reality was different, this declaration formed the sheet anchor of political agitation in India.)
- The administration was urged to take steps to ameliorate the conditions of slaves and to ultimately abolish slavery. (Slavery was abolished in 1843.)
- The Charter Act of 1833 attempted to introduce a system of open competition for selection of civil servants and stated that the Indians should not be debarred from holding any place, office and employment under the Company. However, this provision was negated after opposition from the Court of Directors.

Significance

- **Establishment of the Indian Law Commission:** The act established the Indian Law Commission, tasked with codifying and reforming Indian laws. This aimed to create a more comprehensive, consistent, and fair legal system in India.
- **Admission of Indians into Civil Service:** The act opened up the East India Company's civil service to Indians based on merit and qualifications. This aimed to improve the representation and participation of Indians in the administration of British India.

CHARTER ACT OF 1853 (GOVERNOR-GENERAL OF INDIA DALHOUSIE)

Background: The Charter Act of 1853 was the final renewal of the East India Company's charter, granted under the British monarchy. It was passed by the British Parliament in response to the growing concerns about the Company's administration of India and the need for further reforms. The act aimed to address the shortcomings of previous legislation and introduce new measures to improve the governance and administration of British India.

Some of The Key Features are

- The Company was to continue possession of territories unless the Parliament provided otherwise.
- The number of members of the court of Directors was reduced from 24 to 18. 6 among them were to be appointed by the British Crown.
- The Company's patronage over the services was dissolved—the services were now thrown open to a competitive examination.
- The law member became the full member of the Governor-General's executive council.
- The separation of the executive and legislative functions of the Government of British India progressed with the inclusion of six additional members for legislative purposes.
- Local representation was introduced in the Indian legislature. The legislative wing came to be known as the Indian Legislative Council. However, a law to be promulgated needed the assent of the Governor-General, and the Governor-General could veto any bill of the legislative council.

Significance

- The separation of legislative and executive powers and the introduction of competitive examinations for civil service recruitment were significant steps toward modernization and efficiency in governance.
- The act's emphasis on the representation and participation of Indians in the Legislative Council reflected a growing awareness of Indian aspirations and the need for greater involvement in their own governance.

GOVERNMENT OF INDIA ACT, 1858 (VICEROY CANNING)

Background: When the British Crown assumed sovereignty over India from the East India Company, the Parliament enacted the **first statute for the governance of India** under the direct rule of the British Government – the **Government of India Act, 1858.**

This **significant Act was enacted in the wake of the Revolt of 1857** – also known as the First War of Independence or the 'sepoy mutiny'.

The act, known as **the Act for the Good Government of India,** liquidated the East India Company and transferred the powers of Government, territories, and revenues to the British Crown. (India became a direct British colony.)

The Provisions of This Act Were as Follows

- **Liquidation of the East India Company:** The Act resulted in the collapse of the East India Company and the transfer of control of Indian colonies to the British Crown.
- **Governance in the Name of the British Queen:** The Act stated that the British Indian possessions would be administered in the name of Queen Victoria.
- **Introduction of the Secretary of State and Council:** He was to be a member of the British Parliament and a member of the Prime Minister's cabinet. The Secretary of State for India was in charge of communication between the British and Indian governments. The Secretary of State had enormous powers and could issue secret despatches to India without consulting the council. He was assisted by a council of **15 members.**
- **Scrapping of the Court of Directors and Board of Control:** The powers previously held by the Company's Court of Directors were transferred to the Secretary of State for India.
- **Appointment of Governor-General and Viceroy:** The Act changed the designation of the Governor-General of India to that of Viceroy of India. who functioned as the direct representative of the British Crown in India.
- **Establishment of the Executive Council:** The Viceroy was to be helped by an Executive Council in carrying out British India's administrative tasks.
- **Abolition of Dual Government and the Doctrine of Lapse:** The Act repealed the Pitt's India Act's dual government system and removed the doctrine of lapse, which permitted the British to conquer states without a male heir.
- **Introduction of Indian Civil Services:** The Act provided for the foundation of the Indian Civil Services, which were tasked with administering the country. Indian were allowed to part of British Army, earlier they were just part of EIC army
- **Status of Indian Princes and Chiefs:** More than 560 Indian princes and chiefs were allowed to retain their independence as long as they recognized British suzerainty.

Limitation

The Act of 1858 did not alter in any substantial way the System of Government of India.

INDIAN COUNCILS ACT OF 1861 (VICEROY CANNING)

Background: Following the **significant uprising of 1857,** the British Government recognized the need to involve Indians in the governance of their nation. In line with this strategy of collaboration, the **British Parliament passed three acts in 1861, 1892, and 1909.**

The **provisions of this Act** were as follows:

- The **induction of Indians into the Legislative Council** marked the initiation of representative institutions. This involved the **Viceroy nominating certain Indians** as non-official members of his expanded council.
- In **1862, Canning,** the Viceroy at that time, nominated three Indians to his legislative council: the Raja of Banaras, the Maharaja of Patiala, and Sir Dinkar Rao
- **Decentralisation:** The restoration of the Bombay and Madras Presidencies' legislative authority marked the beginning of decentralisation. The centralizing trend that had begun with the Regulating Act of 1773 and peaked under the Charter Act of 1833 was reversed as a result of this. The devolution of legislative authority resulted in the provinces being granted almost total internal autonomy in 1937.
- **Legislative Council:** The introduction of new legislative councils was accompanied by the establishment of legislative councils for Bengal, North-Western Provinces, and Punjab. These councils were set up in 1862, 1886, and 1897, respectively.
- **Portfolio System:** It granted authority to the Viceroy to establish regulations and directives to facilitate smoother business transactions within the council. Additionally, it acknowledged the 'portfolio' system, first implemented by Canning in 1859.
- According to this system, a member of the Viceroy's council assumed responsibility for one or more government departments and had the mandate to issue conclusive orders on behalf of the council concerning matters within their designated department(s).
- **Ordinance powers:** It granted authority to the Viceroy to promulgate ordinances without requiring the approval of the legislative council in times of emergency, which were to remain valid as law for six months unless cancelled by the Secretary of State in Council or by the Legislative Council at the Centre.
- This act **vested the Governments of Bombay and Madras with legislative powers.**
- **The budget system** was introduced in British India **in 1860.**

Significance

It introduced a grain of popular element to the extent that it provided that the Governor-General's executive council, which was traditionally comprised solely of officials, should now include specific non-official members when engaged in legislative activities as a legislative council.

INDIAN COUNCILS ACT OF 1892 (VICEROY LANSDOWNE)

The Provisions of This Act Were as Follows

- **Increased non-officials:** It preserved the official majority in the Central and provincial legislative councils while adding more (non-official) members.

- **Enhanced Legislative Functions:** It **empowered legislative councils** to discuss the **budget and ask questions of the administration** after providing them with six days' notice.
- **Nomination of Non-Officials:** It stipulated that the **Viceroy, acting on the advice of the provincial legislative councils and the Bengal Chamber of Commerce,** could **nominate certain non-official members of the Central Legislative Council,** and the Governors could nominate members of the provincial legislative councils acting on the advice of district boards, municipalities, universities, trade associations, zamindars, and chambers.
- **Election-related indirect provisions:** The act established a restricted and indirect provision for the use of elections to fill a few non-official seats in the province and national legislative councils. The Act did not, however, contain the word "election." The procedure was explained as a nomination submitted on specific bodies' recommendations

INDIAN COUNCILS ACT OF 1909 (VICEROY MINTO)

This Act is also known as Morley-Minto Reforms (Morley was the then Secretary of State for India, and Minto was the then Viceroy of India).

The Provisions of This Act Included The Following

- **Increased Legislative Size:** The Act significantly augmented the size of both Central and provincial legislative councils. The membership in the Central legislative council was **raised from 16 to 60,** while the **number of members in provincial legislative councils varied.**
- **Retained Majority in Central:** While maintaining an **official majority** in the Central legislative council, the Act permitted provincial legislative councils to have a non-official majority.
- **Increased Functions:** The Act expanded the deliberative functions of legislative councils at both levels. Members were granted the **ability to pose supplementary questions,** propose resolutions on the budget, and engage in similar activities.
- **Association of Indians with Executives:** It , for the first time, introduced the association of Indians with the executive councils of the Viceroy and Governors. Satyendra Prasad Sinha made history as the first Indian to join the Viceroy's executive council, serving as the Law Member.
- Introduced Communal Representation: The Act implemented a system of communal representation for Muslims by endorsing the concept of a 'Separate Electorate.' Under this provision, Muslim members were to be elected exclusively by Muslim voters, thereby legalizing communalism. Minto gained recognition as the Father of the Communal Electorate. Additionally, the income qualification for Muslim voters was lower than that for Hindu voters.
- Separate Representation: The Act also mandated separate representation for presidency corporations, chambers of commerce, universities, and zamindars.

GOVERNMENT OF INDIA ACT OF 1919 (VICEROY CHELMSFORD)

On August 20, 1917, the British Government **(for the first time)** declared its aim for the gradual introduction of a responsible Government in India, leading to the enactment of the **Government of India Act of 1919,** commonly known as the **Montagu-Chelmsford Reforms** (named after the Secretary of State for India, Montagu, and the Viceroy of India, Chelmsford). This legislation, effective in 1921, implemented several significant provisions:

- **Introduction of Dyarchy:** The Act relaxed central control over provinces by delineating central and provincial subjects. Both central and provincial legislatures were empowered to enact laws within their respective subject lists. Despite this, the government structure remained centralised and unitary.

  Provincial subjects were **divided into transferred and reserved categories.**
  - **Transferred subjects were administered by the Governor** with ministerial aid responsible to the legislative council, while
  - **Reserved subjects** were managed by the **Governor and his executive council** without legislative council responsibility.

  This dual governance structure, **known as 'dyarchy', proved largely unsuccessful.**
- **Introduced Bicameralism:** Bicameralism and direct elections were introduced for the first time, replacing the Indian legislative council with a bicameral legislature comprising an Upper House (Council of State) and a Lower House (Legislative Assembly). The majority of members in both houses were directly elected. Additionally, it mandated that three of the six members of the Viceroy's Executive Council (excluding the Commander-in-Chief) were to be Indian.
- **Extended Communal Representation:** The Act extended communal representation by establishing separate electorates for Sikhs, Indian Christians, Anglo-Indians, and Europeans.
- **Limited Franchise Granted:** The franchise was granted to a restricted segment of the population based on property, tax, or education.
- **Office of High Commissioner:** It created the office of the High Commissioner for India in London, transferring

some functions previously performed by the Secretary of State for India. The Secretary of State was now to be paid by the British Exchequer.

- **Central Public Service Commission:** The Act provided for the establishment of a public service commission, leading to the establishment of the Central Public Service Commission in 1926 for recruiting civil servants.
- **Separate Budget:** It separated provincial budgets from the Central budget for the first time, authorizing provincial legislatures to enact their budgets.
- **Commission to Enquire on Working of the Act:** The Act included a provision for the appointment of a statutory commission (Simon Commission) to inquire into and report on its functioning after ten years.

IGNITE YOUR MIND

In the present-day context, how far has the Indian polity been successful in tackling the challenge of modern communalism?

GOVERNMENT OF INDIA ACT OF 1935 (VICEROY WILLINGDON)

The Act marked a second milestone towards a completely responsible government in India. It was a lengthy and detailed document having **321 Sections and 10 Schedules.**

The Characteristics of This Act Included

- **Division of the Subjects:** The Act proposed the creation of an All-India Federation, comprising provinces and princely states as units. It delineated powers between the Centre and units through three lists:
  - Federal List (for Centre, encompassing 59 items)
  - Provincial List (for provinces, covering 54 items)
  - Concurrent List (for both, involving 36 items)

  Residual powers were vested in the Viceroy. However, the federation did not materialize due to the non-participation of princely states.
- **Provincial Autonomy:** The Act **abolished dyarchy in provinces,** instituting 'provincial autonomy' instead. Provinces could function as autonomous administrative units within their designated spheres. The Act also introduced **responsible government** in provinces, requiring the Governor to act on the advice of ministers accountable to the provincial legislature. This was implemented in 1937 but discontinued in 1939. **Provinces derived power directly from the Crown,** enabling them to borrow money for their own security.
- **Dyarchy at Centre:** The Act provided for the adoption of dyarchy at the Centre, dividing federal subjects into reserved and transferred subjects. However, **this provision did not come into operation.**
- **Introduction of Bicameralism:** Bicameralism was introduced in six out of eleven provinces, including Bengal, Bombay, Madras, Bihar, Assam, and the United Provinces. These legislatures became bicameral, comprising a legislative council (upper house) and a legislative assembly (lower house), although numerous restrictions were imposed.
- **Communal Representation:** The Act extended communal representation by establishing separate electorates for depressed classes (Scheduled Castes), women, and labour (workers).
- **Extended Franchise:** Approximately 10 percent of the total population gained the right to vote.
- **Abolished the Council:** The Act abolished the Council of India established by the Government of India Act of 1858, providing the secretary of state for India with a team of advisors.
- **Establishment of RBI:** It facilitated the establishment of the Reserve Bank of India to regulate the country's currency and credit.
- **Public Service Commissions in the provinces:** The Act provided for the creation of not only a Federal Public Service Commission but also Provincial Public Service Commissions and Joint Public Service Commissions for two or more provinces.
- **Federal Court:** It established a Federal Court in 1937 with original and appellate powers to settle inter-state disputes, although this court was largely influenced by the Privy Council in London.

IGNITE YOUR MIND

Indian Constitution is referred to as a "Carbon copy of the 1935 act". Can you think of reasons that compelled our constitution makers to continue with the same framework of provisions?

INDIAN INDEPENDENCE ACT OF 1947

Again on June 3, 1947, the British Government reiterated that any Constitution formulated by the Constituent Assembly of India (established in 1946) would not be applicable to regions of the country that are unwilling to accept it. Simultaneously, Mountbatten, serving as the Viceroy of India, introduced the partition plan, commonly recognized as the Mountbatten Plan, on the same day. Both the Congress and the Muslim League endorsed the plan, and it was promptly implemented through the enactment of the Indian Independence Act of 1947.

The **provisions of this legislation** encompassed the following key points:

- **End of British Rule:** It marked the conclusion of British rule in India, officially declaring India as an independent and sovereign state on August 15, 1947.
- **Partition:** The act facilitated the partition of India, and established two autonomous dominions—India and Pakistan—each with the right to secede from the British Commonwealth.
- **Administrative Changes:** The legislation abolished the position of Viceroy, introducing a Governor-General for each dominion appointed by the British King on the advice of the dominion cabinet. The British government held no responsibility for the governance of India or Pakistan.
- **Legislative Powers:** It stripped the British Monarch of the authority to veto bills or request the reservation of certain bills for approval. This prerogative was retained by the Governor-General, who had full power to assent to any bill in the name of His Majesty.
- **Constitutional Heads:** The Governor-General of India and provincial governors were designated as Constitutional (nominal) heads of the states, obligated to act on the advice of their respective councils of ministers in all matters.
- **Removal of Imperial Title:** The royal titles of the King of England no longer included the title of Emperor of India.
- **Empowerment of Constituent Assemblies:** The act conferred authority upon the Constituent Assemblies of both dominions to formulate and adopt Constitutions, enabling them to repeal any act of the British Parliament, including the Independence Act itself.
- **Legislative Autonomy:** Constituent Assemblies were empowered to legislate for their respective territories until the enforcement of new Constitutions. Acts of the British Parliament passed after August 15, 1947, were not applicable unless extended by the dominion's legislature.
- **Commonwealth Affairs:** The legislation abolished the position of the Secretary of State for India, transferring responsibilities to the Secretary of State for Commonwealth Affairs.
- **Princely States:** Paramountcy over Indian princely states lapsed, and treaty relations with tribal areas ceased on August 15, 1947. Princely states were granted the freedom to join either the Dominion of India, the Dominion of Pakistan, or remain independent.
- **Governance by Government of India Act of 1935:** Provision was made for the governance of dominions and provinces by the Government of India Act of 1935 until new Constitutions were drafted, with dominions authorized to make modifications.
- **Civil Services:** The act discontinued appointments and post reservations by the Secretary of State for India, ensuring that members of the civil services appointed before August 15, 1947, continued to enjoy entitled benefits.

At the **stroke of midnight on August 14-15, 1947,** British rule concluded, transferring power to the independent Dominions of India and Pakistan. **Mountbatten assumed the role of the first Governor General of the Dominion of India,** swearing in **Jawaharlal Nehru as the inaugural Prime Minister of independent India.**

ABOUT INTERIM GOVERNMENT (1946)

Formation: Under the Cabinet Mission, elections were held in the provincial assemblies for the Constituent Assembly in July 1946. Shortly after, on July 29, 1946, the Muslim League gave a call for "direct action" from August 16 to achieve Pakistan. It was followed by communal riots. The Interim Government was sworn in on September 2, 1946. In October 1946, the League also joined it.

The members of the interim Government were members of the Viceroy's Executive Council. The Viceroy continued to be the head of the Council. But, Jawaharlal Nehru was designated as the Vice-President of the Council.

The members of the interim Government	Portfolios held
Jawaharlal Nehru	Vice-President of the Council; External Affairs & Commonwealth Relations
Sardar Vallabhbhai Patel	Home, Information & Broadcasting
Dr. Rajendra Prasad	Food & Agriculture
Dr. John Mathai	Industries & Supplies
Jagjivan Ram	Labour
Sardar Baldev Singh	Defense
Liaquat Ali Khan (Muslim League)	Finance
Abdur Rab Nishtar (Muslim League)	Posts & Air
Asaf Ali	Railways & Transport
C.H. Bhabha	Works, Mines & Power

C. Rajagopalachari	Education & Arts
I.I. Chundrigar (Muslim League)	Commerce
Ghaznafar Ali Khan (Muslim League)	Health
Joginder Nath Mandal (Muslim League)	Law

First Cabinet of Independent India (1947)

Members	Portfolios held
Jawaharlal Nehru	Prime Minister; External Affairs & Commonwealth Relations; Scientific Research
Sardar Vallabhbhai Patel	Home, Information & Broadcasting; States
Dr. Rajendra Prasad	Food & Agriculture
Dr. John Mathai	Railways & Transport
Maulana Abul Kalam Azad	Education
R.K. Shanmugham Chetty	Finance
Dr. B.R. Ambedkar	Law
Jagjivan Ram	Labour
Sardar Baldev Singh	Defence
Raj Kumari Amrit Kaur	Health
C.H. Bhabha	Commerce
Rafi Ahmed Kidwai	Communication
Dr. Shayama Prasad Mukherji	Industries & Supplies
V.N. Gadgil	Works, Mines & Power

CONCLUSION

While the Pre-Independence Legislation played a critical role in the establishment and expansion of British rule in India, it also contributed to the creation of modern institutions and systems. However, these developments came at the cost of significant economic exploitation and political subjugation. The legacy of these Acts is thus a complex interplay of colonial control and the gradual emergence of modern India.

Concept and Making of Constitution

2

INTRODUCTION

The term 'Constitution' is derived from the Latin word, **constituere,** which means to establish or **'to set up'.** In contemporary usage, the term 'Constitution' denotes a collection of principles that delineate the structure and functioning of the government, as well as the dynamic interplay between the government and the populace concerning their respective **rights and responsibilities.**

Constitution is the **bedrock of any nation's governance system,** providing a framework of laws and principles that guide the functioning of the state. This framework of laws is more popularly known as the **'Rule Of Law.'**

CONCEPT OF RULE OF LAW

The **principle of 'Rule of Law' is centuries old. Its current form is defined by A.V. Dicey,** the British jurist. It states that the Law has absolute supremacy and no individual or institution, including the government, is above the Law. The government must act within the bounds of the Law. This means that no one is punished except for a clear violation of the law.

While the first and second elements find application in the Indian legal system, the **third element** does not. In India, individual rights are derived from the Constitution itself.

The **Supreme Court,** recognizing the **significance of the 'Rule of Law,'** has declared it as a **'Basic Structure' of the Constitution.** Consequently, this fundamental principle cannot be dismantled, even through Constitutional amendments.

CONSTITUTIONALISM

According to **Friedrich: "Constitutionalism** *provides a system of effective restraints upon governmental action. It is a body of rules ensuring fair play, thus rendering the government responsible"*.

The concepts of Constitution and Constitutionalism share a close relationship, yet they exhibit distinct differences:

Louis Henkin, Eight Principles of Constitutionalism
Popular Sovereignty
Rule of Law
Democratic Governance (With Responsibility and Accountability)
An Independent Judiciary
Police Governed By Legal and Judicial Control
Separation Of Powers (Incorporating Checks And Balances)
Adherence To Individual Rights
Civilian Oversight of The Military

Fig. 2.1: Louis Henkin, Eight Principles of Constitutionalism

- While a country may possess a 'Constitution,' the presence of 'Constitutionalism' is not guaranteed. For instance, in a dictatorship where the ruler's decrees hold absolute authority, there exists a 'Constitution' but lacks 'Constitutionalism.'
- Constitutionalism acknowledges the necessity of a government with authority but insists on placing limitations on that authority. Unrestricted power can lead to an authoritarian and oppressive government, posing a threat to the freedom of the populace. A country embodies not just a 'Constitution' but also 'Constitutionalism' when its Constitution imposes constraints on governmental power.
- Constitutionalism envisions a polity governed by a Constitution that fundamentally advocates limited government and the rule of law, contrasting with arbitrary, despotic, authoritarian, or totalitarian rule. For Constitutional government to be meaningful, it must inherently align with democratic principles. Any form of arbitrary power, even if sanctioned by a Constitutional document, contradicts the essence of Constitutionalism.

- The essence of Constitutionalism lies in aspiring to establish a political order where governmental powers are restricted, essentially advocating for a limited and, therefore, "civilised" government. The true justification for a Constitution lies in fostering a "limited government" and compelling those in governance to adhere to established laws and regulations.

TYPES OF CONSTITUTION

Constitutions, which serve as the fundamental laws outlining the principles by which a state is governed, can be classified into various types based on their formation, flexibility, and the nature of their rules and regulations. The primary types of constitutions are:

- **Written and Unwritten Constitutions:**
  - **Written Constitution:** It is a formal document that defines the structure of the government and the rights of the governed. Usually, it is a single, consolidated text, like the Constitution of the United States.
  - **Unwritten Constitution:** This type of constitution is not contained in a single document but consists of various sources, including statutes, legal codes, and judicial decisions. An example is the Constitution of the United Kingdom, which is largely unwritten and based on customs, traditions, judicial decisions, and statutes.
- **Flexible and Rigid Constitutions:**
  - **Flexible Constitution:** It can be easily amended or changed. The amendment process is not significantly different from the process of passing ordinary legislation. An example is the British Constitution.
  - **Rigid Constitution:** It requires a special procedure for amendment, which is usually more complex than the process of passing ordinary laws. The U.S. Constitution is an example of a rigid constitution.
- **Federal and Unitary Constitutions:**
  - **Federal Constitution:** It establishes a dual system of government, with powers being divided between a central government and regional or state governments. Each level of government has its own rights and responsibilities. The U.S. and Germany have federal constitutions.
  - **Unitary Constitution:** It centralizes power in a single central government with limited powers, regional authority get there power as delegated by central government not from the Constitution. The United Kingdom has a unitary constitution.
- **Presidential and Parliamentary Constitutions:**
  - **Presidential Constitution:** The executive branch is separate from the legislative branch, and the President is both the head of state and the head of government, as in the United States.
  - **Parliamentary Constitution:** The executive is derived from the legislative branch, and the Prime Minister is typically the head of government, with a separate head of state (monarch or president), as in the United Kingdom or India.
- **Monarchical and Republican Constitutions:**
  - **Monarchical Constitution:** It recognizes a monarch, either as a ceremonial head of state (constitutional monarchy) or with significant powers (absolute monarchy). The United Kingdom and Sweden have constitutional monarchies.
  - **Republican Constitution: I**t establishes a republic without a monarchy, where the head of state is usually elected, either directly or indirectly. The United States and France are examples of a republic.
- **Theocratic and Secular Constitutions:**
  - **Theocratic Constitution:** It forms its principles and laws on religious doctrines and texts. An example is Iran, where Islamic law is a significant basis of the legal system.
  - **Secular Constitution:** It separates religion from the state and does not establish its laws on religious doctrines. The Indian Constitution is a secular constitution.

Indian Constitution - From Colonial Charter to Democratic Pillar

"Swaraj will not be a free gift of the British Parliament; it will be a declaration of India's full-expression. That it will be expressed through an Act of Parliament is true but it will be merely a courteous ratification of the declared wish of the people of India even as it was in the case of the Union of South Africa." **–Gandhi ji**

M.N. Roy for the first time put forward the idea of a constituent assembly for India in 1934. In 1938 JL Nehru declared that "the Constitution of free India must be framed, without outside interference by a Constituent Assembly elected on the basis of the adult franchise".

This was reiterated in 1939 at the Ludhiana Session of the All India States People's **Conference** under the leadership of Nehru. This demand was, however, resisted by the British Government until the outbreak of World War II when **external circumstances forced them** to realize the urgency of solving the Indian Constitutional problem.

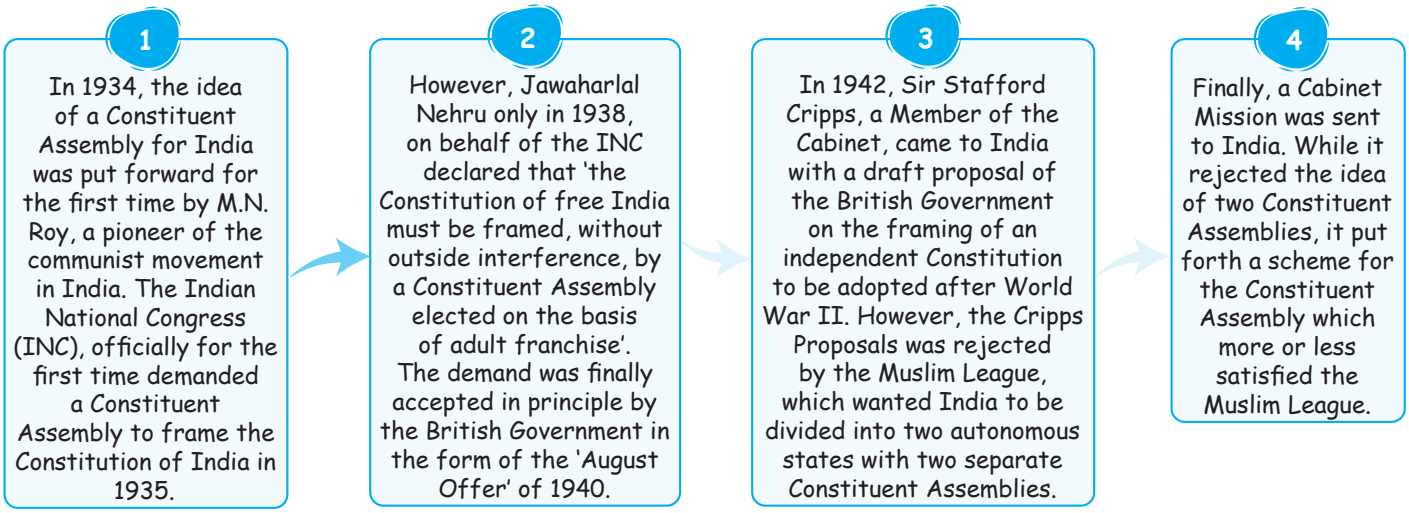

1
In 1934, the idea of a Constituent Assembly for India was put forward for the first time by M.N. Roy, a pioneer of the communist movement in India. The Indian National Congress (INC), officially for the first time demanded a Constituent Assembly to frame the Constitution of India in 1935.
2
However, Jawaharlal Nehru only in 1938, on behalf of the INC declared that 'the Constitution of free India must be framed, without outside interference, by a Constituent Assembly elected on the basis of adult franchise'. The demand was finally accepted in principle by the British Government in the form of the 'August Offer' of 1940.
3
In 1942, Sir Stafford Cripps, a Member of the Cabinet, came to India with a draft proposal of the British Government on the framing of an independent Constitution to be adopted after World War II. However, the Cripps Proposals was rejected by the Muslim League, which wanted India to be divided into two autonomous states with two separate Constituent Assemblies.
4
Finally, a Cabinet Mission was sent to India. While it rejected the idea of two Constituent Assemblies, it put forth a scheme for the Constituent Assembly which more or less satisfied the Muslim League.

Fig. 2.2: Timeline of Constituent Assembly

CONSTITUENT ASSEMBLY

The **formation of the Constituent Assembly** took place in **November 1946,** following the **structure outlined in the Cabinet Mission Plan.** The key provisions of the Cabinet Mission Plan included:

- **Representation Strength:** The Constituent Assembly's **total strength was set at 389 members.** Out of these, 296 seats were designated for British India, and 93 seats were allocated to the princely states. Within the 296 seats for British India, 292 members were to be chosen from the eleven governors' provinces and four from the Chief Commissioners' provinces, with one member from each.
- **Proportional Representation:** Provinces and princely states (or groups of states in the case of smaller states) were to receive seats based on their respective populations. Roughly one seat was to be allotted for every million of the population.
- **Communal Representation:** Seats assigned to British provinces were to be distributed among the three principal communities—Muslims, Sikhs, and General (all except Muslims and Sikhs)—in proportion to their population. Representatives of each community were to be elected by members of that community in the provincial legislative assembly, utilizing proportional representation through the single transferable vote method.
- **Nomination in the Princely States:** Representatives from the princely states were to be nominated by the heads of those states.

In summary, the **Constituent Assembly was designed** to be a body that was **partly elected and partly nominated.** Furthermore, its members were to be indirectly elected by members of the provincial assemblies, who themselves were elected under a limited franchise.

OUTCOME OF THE ELECTIONS IN 1946

- **Elections for the Constituent Assembly were held in July-August 1946,** resulted in the Indian National Congress securing 208 seats, the Muslim League claiming 73, and the remaining 15 seats distributed among small groups and independents.
- Nevertheless, the 93 seats designated for princely states remained vacant as these states chose not to participate in the Constituent Assembly.
- Despite not being directly elected by the Indian people through the adult franchise, the Constituent Assembly was representative of various segments of Indian society, encompassing Hindus, Muslims, Sikhs, Parsis, Anglo-Indians, Indian Christians, SCs, STs, and women from these communities.
- The **Assembly featured prominent figures** from India's diverse landscape, **excluding Mahatma Gandhi.**

THE NEWLY FORMED CONSTITUENT ASSEMBLY

- The Constituent Assembly's first meeting was held on **December 9, 1946.** But, the Muslim League boycotted the meeting and insisted on a separate state of Pakistan. Hence, it was attended by only 207 members.
- According to the **French practice, Dr. Sachchidananda Sinha,** the oldest member, was elected as the temporary President of the Assembly. However, later Dr. Rajendra Prasad was elected as the President of the Assembly.
- Similarly, both **H.C. Mukherjee and V.T. Krishnamachari** were elected as the Vice-Presidents of the Assembly. (*The Assembly had two Vice-Presidents*)

OBJECTIVE RESOLUTION IN CONSTITUENT ASSEMBLY

On **December 13, 1946, Jawaharlal Nehru** moved the historic '*Objectives Resolution*' in the Assembly. It laid down the fundamentals and philosophy of the Constitutional structure. It read:

- This Constituent Assembly declares its firm and solemn resolve to proclaim India as an **Independent Sovereign Republic** and to draw up for her future governance a Constitution.
- The territories that had comprised British India, the territories that have now formed the Indian States, and such other parts of India as are outside India and the States as well as other territories as are willing to be constituted into the independent sovereign India, shall be a Union of them all.
- The territories, whether with their present boundaries or with such others as may be determined by the Constituent Assembly and thereafter according to the law of the Constitution, shall possess and retain the status of autonomous units together with residuary powers and exercise all powers and functions of Government and administration, save and except such powers and functions as are vested in or assigned to the Union or as are inherent or implied in the Union or resulting therefrom.
- All **power and authority of the sovereign independent India,** its constituent parts, and organs of Government will be *derived from the people*;
- It shall be **guaranteed and secured to all the people of India** justice, social, economic, and political; equality of status of opportunity, and before the law; freedom of thought, expression, belief, faith, worship, vocation, association, and action, subject to the law and public morality; and
- Adequate safeguards shall be provided *for* **minorities, backward and tribal areas, depressed and other backward classes.**
- The **integrity of the territory** of the Republic and its sovereign rights on land, sea, and air are to be maintained according to justice and the law of civilised nations;
- India as an ancient land attains its rightful and honoured place in the world and makes its full and willing contribution to the promotion of world peace and the welfare of mankind.

This Resolution was unanimously adopted by the Assembly on **January 22, 1947** and it influenced the eventual shaping of the Constitution through all its subsequent stages. The modified version forms the Preamble of the present Constitution.

Impacts of the Indian Independence Act of 1947 on the Constituent Assembly:

- The representatives of the princely states, who had stayed away from the Constituent Assembly, joined it gradually. On April 28, 1947, representatives of the six states were part of the Assembly.
- After the acceptance of the **Mountbatten Plan** of June 3, 1947, for the country's partition, the representatives of most of the other princely states took their seats in the Assembly. The members of the **Muslim League** from the Indian Dominion also entered the Assembly.

The Constituent Assembly also:

Ratified India's membership of the Commonwealth in May 1949.

Adopted the national flag on July 22, 1947.

Adopted the national anthem on January 24, 1950.

- The Indian Independence Act of 1947 made the following *three changes* in the position of the Assembly:
  - The Assembly was made a fully sovereign body, which could now frame any Constitution as it required. The act empowered the Assembly to abrogate or alter any law made by the British Parliament in relation to India.
  - The Assembly also became a legislative body. Two separate functions were assigned to the Assembly, that is, making of the Constitution for free India and enacting ordinary laws for the country. These two tasks were to be performed on separate days.
  - Thus, the Assembly became the **first Parliament of free India** (Dominion Legislature). Whenever the Assembly met as the Constituent body, it was chaired *by* **Dr. Rajendra Prasad,** and when it met as the legislative body, it was chaired by **G.V. Mavlankar.**

However, due to the withdrawal of Muslim league members, the total strength of the Assembly came down to 299, as against 389 originally fixed in 1946 under the Cabinet Mission Plan. The strength of the Indian provinces (formerly British Provinces) was reduced from 296 to 229 and those of the princely states from 93 to 70.

COMMITTEES OF THE CONSTITUENT ASSEMBLY

The Constituent Assembly appointed several committees to deal with different Constitutional-making tasks. Out of these, eight were major, and the others were minor.

The Names of These Committees and Their Chairman are Given Below

Major Committees -

- **Union Powers Committee -** Jawaharlal Nehru
- **Union Constitution Committee-** Jawaharlal Nehru

- **States Committee (Committee for Negotiating with States)-** Jawaharlal Nehru
- **Drafting Committee-** Dr. B.R. Ambedkar
- **Provincial Constitution Committee-**Sardar Patel
- **Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas-** Sardar Patel. This committee had the following five sub-committees:
  - **Fundamental Rights Sub-Committee-** J.B. Kripalani
  - **Minorities Sub-Committee-** H.C. Mukherjee
  - **North-East Frontier Tribal Areas and Assam Excluded & Partially Excluded Areas Sub-Committee-** Gopinath Bardoloi
  - **Excluded and Partially Excluded Areas (other than those in Assam) Sub-Committee-** A.V. Thakkar
  - **North-West Frontier Tribal Areas Sub-Committee**
- **Steering Committee-** Dr. Rajendra Prasad
- **Rules of Procedure Committee-** Dr. Rajendra Prasad

Minor Committees

- **Finance and Staff Committee-** Dr. Rajendra Prasad
- **Credentials Committee-** Alladi Krishnaswami Ayyar
- **House Committee-** B. Pattabhi Sitaramayya
- **Committee on Chief Commissioners' Provinces-** B. Pattabhi Sitaramayya
- **Expert Committee on the Financial Provisions of the Union Constitution-** Nalini Ranjan Sarkar (Not an Assembly Member)
- **Linguistic Provinces Commission-** S.K. Dar (Not an Assembly Member)
- **Special Committee to Examine the Draft Constitution-** Jawaharlal Nehru
- **Press Gallery Committee-** Usha Nath Sen
- **Ad-hoc Committee on Citizenship-** S. Varadachari (Not an Assembly Member)
- **Order of Business Committee-** Dr. K.M. Munshi
- **Ad-hoc Committee on the National Flag-** Dr. Rajendra Prasad
- **Committee on the Functions of the Constituent Assembly-** G.V. Mavalankar
- **Ad-hoc Committee on the Supreme Court-** S. Varadachari (Not an Assembly Member)

Drafting Committee:

The Drafting Committee was set up on August 29, 1947. This was the **significant committee** that was entrusted with the task of preparing a draft of the new Constitution. **It consisted of:**

- Dr. B.R. Ambedkar as the Chairman.
- N. Gopalaswamy Ayyangar
- Alladi Krishnaswamy Ayyar
- Dr. K.M. Munshi
- Syed Mohammad Saadullah
- N. Madhava Rau (He replaced B.L. Mitter, who resigned because of ill-health)
- T.T. Krishnamachari (He replaced D.P. Khaitan, who died in 1948)

The Drafting Committee, after taking into consideration the proposals of the various committees, prepared the first draft of the Constitution of India, which was published in February, 1948. The people of India were given eight months to discuss the draft and propose amendments. In light of the public comments, criticisms, and suggestions, the Drafting Committee prepared a second draft, which was published in October 1948. The Drafting Committee took less than six months to prepare its draft. In all, it sat only for 141 days.

FINAL DRAFTING AND ENACTING OF THE INDIAN CONSTITUTION

- **First reading:** Dr. B.R. Ambedkar introduced the final draft of the Constitution in the Assembly on November 4, 1948. The Assembly had a general discussion on it for five days (till November 9, 1948).
- **Second Reading:** The clause-by-clause consideration and reading started on November 15, 1948, and ended on October 17, 1949. During this stage, as many as 7653 amendments were proposed and 2473 were actually discussed in the Assembly.
- **Third reading:** On November 14, 1949, Dr. B.R. Ambedkar moved a motion–'the *Constitution as settled by the Assembly be passed'*. The motion on Draft Constitution was declared as passed on November 26, 1949, and received the signatures of the members and the president.

Indians enacted and gave to themselves this Constitution. However, out of a total of 299 members of the Assembly, only 284 were actually present on that day and signed the Constitution. The Preamble was enacted after the entire Constitution was already enacted. Dr. B.R. Ambedkar, the then Law Minister, piloted the Draft Constitution in the Assembly. The Constitution which was adopted on November 26, 1949, contained a **Preamble, 395 Articles, and 8 Schedules.**

Did you know?

- Dr. B.R. Ambedkar took a very significant part in the deliberations of the Assembly. Additionally, he was known for his logical, forceful, and persuasive arguments on the floor of the Assembly.
- Further, he was recognized as the 'Father of the Constitution of India'. This brilliant writer, Constitutional expert, the undisputed leader of the Scheduled Castes, and the 'chief architect of the Constitution of India' is also known as 'Modern Manu.'

SOURCES OF THE CONSTITUTION

SN.	Source	Features Borrowed
1	Government of India Act of 1935	Federal Scheme, Office of the governor, Judiciary, Public Service Commissions, Emergency provisions and administrative details.
2	British Constitution	Parliamentary government, Rule of Law, legislative procedure, single citizenship, cabinet system, prerogative writs, parliamentary privileges and bicameralism.
3	Irish Constitution	Directive Principles of State Policy, nomination of members to Rajya Sabha and method of election of president.
4	US Constitution	Fundamental rights, independence of judiciary, judicial review, impeachment of the president, removal of Supreme Court and high court judges and post of vice-president.
5	Canadian Constitution	Federation with a strong Centre, vesting of residuary powers in the Centre, appointment of state governors by the Centre, and advisory jurisdiction of the Supreme Court.
6	Australian Constitution	Concurrent List, freedom of trade, commerce and inter-course, and joint sitting of the two Houses of Parliament.
7	Weimar Constitution of Germany	Emergency provisions relating to suspension of Fundamental Rights.
8	Soviet Constitution (USSR, now Russia)	Fundamental duties and the ideal of justice (social, economic and political) in the Preamble
9	French Constitution	Republic and the ideals of liberty, equality and fraternity in the Preamble.
10	South African Constitution	Procedure for amendment of the Constitution and election of members of Rajya Sabha.
11	Japanese Constitution	Procedure established by Law.

CRITICISM

- **Lawyer-Politician Dominance:** Critics asserted that the Constituent Assembly was predominantly controlled by lawyers and politicians, emphasizing the insufficient representation of other societal segments. According to critics, this is the main reason for the bulkiness and complicated language of the Constitution.
- **Lack of Representativeness:** Critics contended that the Constituent Assembly lacked true representativeness since its members were **not directly elected** by the people of India through universal adult franchise.
- **Non-Sovereign Status:** Critics argued that the **Constituent Assembly was not sovereign,** asserting that its creation was based on British Government proposals. They further claimed that the Assembly conducted its sessions with the permission of the British Government.
- **Time-Consuming:** According to the critics, the Constituent Assembly took an unduly long time to make the Constitution. They stated that the framers of the American Constitution took only four months to complete their work. In this context, Naziruddin Ahmed, a member of the Constituent Assembly, coined a new name for the Drafting Committee to show his contempt for it. He called it a "Drifting Committee".
- **Congress Party Dominance:** Critics alleged that the Constituent Assembly was overwhelmingly influenced by the Congress party. Granville Austin, an American Constitutional expert, remarked that the Assembly functioned as a **one-party entity in a predominantly one-party country,** asserting that the Congress was synonymous with India.
- **Hindu Dominance:** Some critics contended that the Constituent Assembly displayed a Hindu-centric dominance. **Viscount Simon** referred to it as 'a body of Hindus,' and Winston Churchill commented that the Assembly represented 'only one major community in India.

INDIAN CONSTITUTION

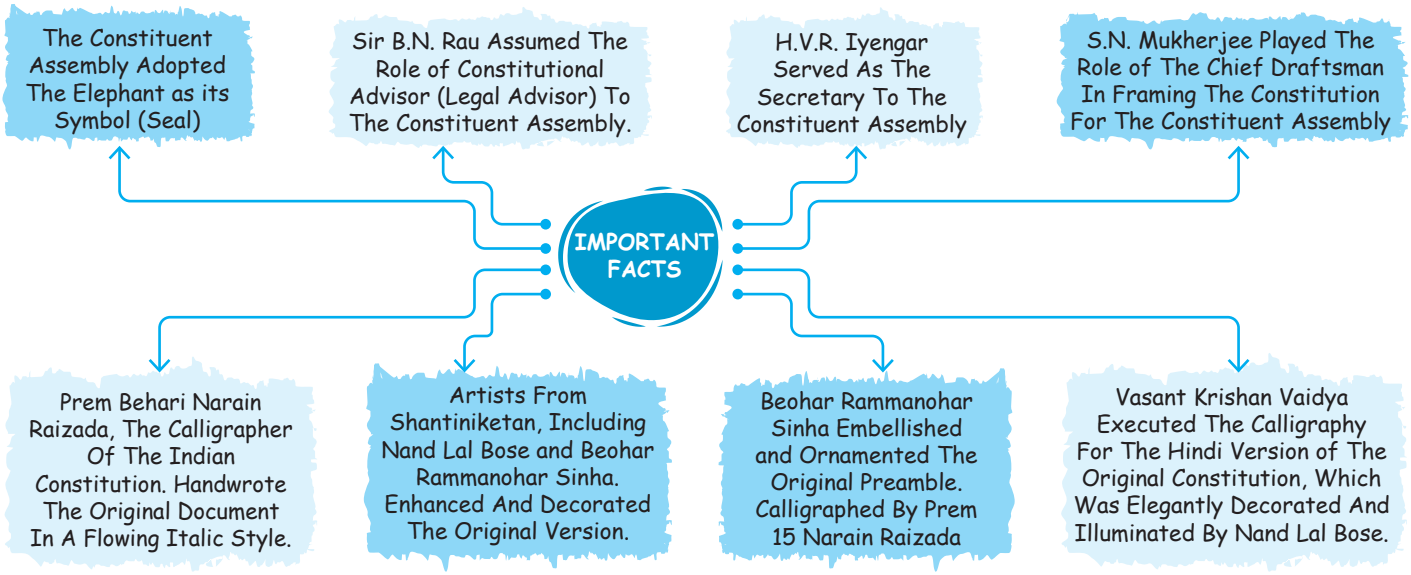

IMPORTANT FACTS
The Constituent Assembly Adopted The Elephant as its Symbol (Seal)
Sir B.N. Rau Assumed The Role of Constitutional Advisor (Legal Advisor) To The Constituent Assembly.
H.V.R. Iyengar Served As The Secretary To The Constituent Assembly
S.N. Mukherjee Played The Role of The Chief Draftsman In Framing The Constitution For The Constituent Assembly
Prem Behari Narain Raizada, The Calligrapher Of The Indian Constitution. Handwrote The Original Document In A Flowing Italic Style.
Artists From Shantiniketan, Including Nand Lal Bose and Beohar Rammanohar Sinha. Enhanced And Decorated The Original Version.
Beohar Rammanohar Sinha Embellished and Ornamented The Original Preamble. Calligraphed By Prem 15 Narain Raizada
Vasant Krishan Vaidya Executed The Calligraphy For The Hindi Version of The Original Constitution, Which Was Elegantly Decorated And Illuminated By Nand Lal Bose.

Fig. 2.5: Important Facts

LANGUAGE OF THE CONSTITUTION

The original Constitution of India did not initially include any provision regarding an authoritative Hindi version. However, the 58th Constitutional Amendment Act of 1987 addressed this by introducing a new Article 394-A in Part XXII. This article outlines the following provisions:

- **The President is mandated to publish:**
  - The translation of the Constitution into the Hindi language. Necessary modifications can be made to align it with the language, style, and terminology of authoritative texts of the Central Acts in Hindi, incorporating all amendments made before such publication.
  - The Hindi translation of each Constitutional amendment made in English.
- The published translations of the Constitution and its amendments are to be interpreted to have the same meaning as the original English text. In case of any difficulty in this matter, the President has the authority to appropriately revise the Hindi text.
- The published translation of the Constitution and its amendments is deemed, for all intents and purposes, as the authoritative text in Hindi.

Articles	Subject matter
393	Short title
394	Commencement
394A	Authoritative text in Hindi language
395	Repeals

WOMEN MEMBERS OF THE CONSTITUENT ASSEMBLY

On **January 24, 1950,** when the representatives of the people who had participated in drafting the Indian Constitution signed the document, it is noteworthy that among the signatories were 15 women. It is crucial to highlight their names, bringing attention to these women who often get overlooked in discussions dominated by the term "founding fathers." The list includes G. Durgabai, Ammu Swaminathan, Amrit Kaur, Dakshayani Velayudhan, Hansa Mehta, Renuka Ray, Sucheta Kripalani, Purnima Banerji, Begum Qudsiya Aizaz Rasul, Kamala Chaudhri, Annie Mascarene, Leela rey Malti chaudhri, Renuka rey, Sarojini Naidu and Vijaylakshmi Pandit.

Women Members in 17th Lok Sabha:

India's lower house, Lok Sabha, has 78 elected women MPs out of the total 543 seats — 14.36% of the total number of MPs are women

Initially, the **Constituent Assembly had 15 women members,** and two more were elected later. In 1946, Hansa Mehta expressed satisfaction that women made up approximately 5% of the total Constituent Assembly membership, a significant achievement for women given the competitive nature of securing seats in a body that made decisions through voting.

CONCLUSION

"However good a Constitution may be, if those who are implementing it are not good, it will prove to be bad. However bad a Constitution may be, if those implementing it are good, it will prove to be good." ***-Dr. B R Ambedkar***

The essence of the **B. R. Ambedkar** statement underscores the critical interplay between the quality of a Constitution and the character of those entrusted with its implementation. It emphasizes that the effectiveness of a Constitution hinges not only on its inherent merits but equally on the integrity and commitment of the individuals responsible for putting it into practice.

This **insight underscores** the **symbiotic relationship** between institutional frameworks and the ethical conduct of those wielding power, reinforcing the notion that a virtuous and conscientious implementation can uplift even a seemingly flawed Constitution. At the same time, a lack of integrity can undermine the best-designed Constitutional principles.

The table below provides you a comparison of the Constitutions of a few countries that have unique features shaped by the country's historical, cultural, and political context.

Aspect	India	USA	Japan	Canada	UK	France
Nature of Constitution	Lengthiest written constitution	First written constitution	Post-WWII constitution	A mix of written and unwritten	Unwritten; based on statutes, conventions	Written; Fifth Republic
Preamble	Detailed preamble	Brief preamble	Detailed preamble	No formal preamble	No preamble	Detailed preamble
Federal/ Unitary	Federal with a strong central government	Federal	Unitary	Federal	Unitary; devolved powers to Scotland, Wales, and N. Ireland	Unitary
Head of State	President (Ceremonial)	President (Executive)	Emperor (Ceremonial)	Monarch (Ceremonial)	Monarch (Ceremonial)	President (Executive)
System of Government	Parliamentary	Presidential	Parliamentary	Parliamentary	Parliamentary	Semi-presidential
Judiciary	Independent	Independent	Independent	Independent	Independent	Independent
Bill of Rights	Fundamental Rights	Bill of Rights	No explicit Bill of Rights	Canadian Charter of Rights and Freedoms	Human Rights Act (1998)	Declaration of the Rights of Man and of the Citizen
Amendment Process	Requires special majority in Parliament	Requires supermajority in Congress and ratification by states	Requires two-thirds majority in both houses and public referendum	Federal and provincial legislatures involved	Parliamentary Sovereignty; no formal amendment procedure	Requires a supermajority in Parliament or referendum

Salient Features of the Constitution

3

INTRODUCTION

The Indian Constitution stands out for its distinctive features and spirit. While it drew inspiration from various global Constitutions, it possesses unique qualities that set it apart from others. The Constitution of India serves as a testament to our nation's democratic ideals and fundamental values. Rooted in the Preamble, these constitutional values resonate throughout the Indian Constitution, which shapes its fundamental principles.

The following are the Features of the Indian Constitution

❑ **Lengthiest Written Constitution**

- The Constitution of India holds the distinction of being the longest-written Constitution globally. Initially comprising a Preamble, **395 Articles distributed across 22 Parts, and 8 Schedules**, it laid the foundation for our democratic republic (Currently, the Indian Constitution has expanded to encompass 448 articles spanning 25 parts, along with 12 schedules and 106 amendments).

> In comparison to other nations, the U.S.A.'s Constitution comprises a mere 7 Articles, Canada's 47, and Australia's 128 articles. However, the complexity of the Indian Constitution, with its 448 articles and meticulous detailing across 25 parts, was intentional.

- The Constitution's size is influenced by the country's vastness and unique challenges related to language, scheduled castes, tribes, and minorities.
- Certain states like **Nagaland (Article 371A), Mizoram (Article 371G), Assam (Article 371B), and Gujarat (Article 371),** were granted unique privileges.
- It outlines the structure for both the Central Government and States, unlike the Australian and American Constitutions, which omitted specifics on state government machinery.
- Unlike many Constitutions, the Indian Constitution not only establishes fundamental governance principles but also delves into administrative specifics, including detailed provisions on Centre-State relations and emergency situations.

❑ **Principles enshrined in the constitution**

- In accordance with the Preamble, India is proclaimed a Sovereign Socialist Secular Democratic Republic, emphasizing its autonomy from external influences.
- The term **Socialist** was introduced into the Preamble by the **42nd Amendment Act 1976,** denoting state participation in production. India is currently moving towards privatization in its mixed economy model.
- In a **Secular** state, no religion is recognized as the state religion. All religions are treated equally, and the state is concerned with regulating human relations, not the relationship of man with God.
- The term **Democratic** signifies that the government derives its authority from the will of the people. Rulers are elected through democratic processes, ensuring a representative government.
- In democratic principles, **Justice, Liberty, Equality, and Fraternity** are fundamental.
- A **Republic** signifies an elected, not hereditary, head of State. India's President exemplifies this democratic essence.

❑ **Blend of flexibility and rigidity**

- Different Constitutions incorporate different amendment methods, which are both flexible and rigid. India employs a special process, while the British, with its unwritten Constitution, follows standard law-making, which embodies flexibility.
- The US Constitution, being rigid, presents challenges in amendments. In contrast, the Indian Constitution incorporates both procedures, offering flexibility and adaptability.
- The Indian Constitution incorporates diverse amendment procedures such as simple majority, special majority, the requirement of half of the states to give their assent in cases that affect the federal provision of the Constitution. This nuanced approach blends rigidity and flexibility, fostering both continuity and change.

❑ **Federal structure of government**

- India's federal structure, outlined in our Constitution, harmonizes regional and central governance. The **written framework, power division, bicameral Legislature, and an independent Judiciary** are the cornerstones of our federalism.

- Indian federalism upholds unity, decentralization, and Union dominance. Central powers like Governor appointments and Emergency provisions highlight the unitary tendency within the federal framework.

❑ **Drawn from various sources**

- India's Constitution drew inspiration from various sources, including the Government of India Act of 1935 for its structure, the United States Constitution for its emphasis on judicial independence and Fundamental Rights, and others.
- The architects of India's Constitution adapted borrowed elements to fit India's unique circumstances.
  - For example, while India's cabinet system draws inspiration from the United Kingdom, it functions differently and does not wield absolute authority like its British counterpart.

❑ **Fundamental Rights**

- A fundamental distinction between the Indian Constitution and the Government of India Act of 1935 lies in the inclusion of Fundamental Rights in the former, underscoring India's commitment to individual liberties.
- Part III of the Indian Constitution, often called the 'conscience,' contains the Fundamental Rights. These rights protect citizens from State and individual power, emphasizing the delicate balance between individual liberty and societal interests.

IGNITE YOUR MIND

How do the Fundamental Rights ensure that the Rule of Law prevails in the Indian polity?

❑ **Directive Principles of State Policy**

- A distinctive aspect of our Constitution is the Directive Principles (Part IV) which provide positive directives to the State, emphasizing its obligation to promote the welfare of the people.
- Directive Principles, while **non-binding,** hold paramount importance in governance, and strive to fulfil the ideals of social and economic justice outlined in the Preamble. They address income disparities, equal opportunities, and wealth distribution.
- Social justice directives encompass facilities for marginalized groups like Scheduled Castes, Scheduled Tribes, women, children, and workers, ensuring equal justice, education, and healthcare.
- DPSPs, alongside Fundamental Rights, form the **conscience of the Constitution.**

❑ **Fundamental Duties**

- The 42nd Constitutional Amendment Act in 1976 incorporated "Fundamental Duties" (Part IVA, Article 51A) for citizens.
- These duties serve as a constant reminder, aligning citizens' Fundamental Rights with essential democratic norms and conduct.
- Similar to Directive Principles, these duties lack judicial enforcement but serve as reminders, integrating citizen responsibilities into India's basic law, hence a distinctive constitutional feature.

❑ **Independent Judiciary**

- An independent Judiciary serves as the bedrock of the rule of law and democracy. The Constitution meticulously separated the Judiciary from the **Legislature and Executive,** empowering it with the crucial tool of judicial review.
- This authority enables the Judiciary to maintain the delicate balance between government branches, preventing unwarranted intrusion. Furthermore, the Constitution grants complete financial independence and security of tenure to Judges, ensuring their impartiality and autonomy in administering justice.

❑ **Integrated Judiciary**

- India's judicial framework differs significantly from federal nations like the USA. While they follow a decentralized system, India has established an integrated and unified approach to justice.
- In India's judicial structure, a single hierarchy prevails. The Supreme Court stands at the national level, overseeing High Courts at the state level and, further down, the subordinate courts at the district and lower levels.
- Unlike the USA, where federal laws are enforced by the federal judiciary and state laws by state judiciary, India follows a single system of judiciary where courts from lowest to highest level enforce both Centre and State laws.
- This unified approach ensures justice for all citizens in a consistent and equitable manner.

❑ **Single Citizenship**

- The Indian Constitution embodies a dual polity, distinguishing between the Centre and States. Despite this division, it establishes a unique concept of single citizenship. This means that, every Indian, regardless of their residence or birthplace within the country, holds the same citizenship, i.e., Indian, fostering a cohesive national identity.
- Unlike the USA, where dual citizenship (National and State) exists, every Indian enjoys unified citizenship with equal rights across the country.
- This provision in our Constitution stands as a testament to our commitment to equality, unity, and integrity.

❑ **Emergency Provisions**

- One of the distinctive features of the Indian Constitution is its federal nature, which transforms it

into a unitary character during times of emergency. This shift in power dynamics during a state of emergency underscores the Constitution's ability to adapt and address critical situations, ensuring the nation's stability and security.

- During emergencies, the Indian Parliament gains authority to legislate on State list subjects and direct State executive powers, centralizing all powers within the Union government. This transformation results in a unitary character, emphasizing the Constitution's adaptability in ensuring a unified response to critical situations.

❑ **Universal Adult Franchise**

- In India, the democratic essence thrives in the universal adult suffrage granted to every citizen not below the age of 18 years (Article 326)
  - ❒ The Constitution (Sixty-first Amendment) Act, 61st Constitutional Amendment Act of 1988., lowered the voting age of elections to the Lok Sabha and to the Legislative Assemblies of States from 21 years to 18 years.
- This fundamental right ensures equal participation in electing representatives without any prejudice, emphasizing the democratic spirit ingrained in our Constitution.
- Universal adult franchise stands as the bedrock of our democracy, embodying the essence of popular sovereignty.

❑ **Parliamentary form of Government**

- Following independence, the framers of our Constitution deliberated between the Presidential and Parliamentary systems. Opting for the Parliamentary model, they prioritized the synergy between the Legislature and Executive, fostering a robust structure for governance and ongoing performance evaluation.
- The bedrock of parliamentary governance lies in the Executive's obligation to the Legislature, populated by the people's representatives. This integration enhances accountability and prevents power centralization. India's Constitution disperses powers, promoting governmental stability and responsibility.

❑ **Secularism**

- India hosts diverse religions, and the Constitution ensures absolute religious freedom and equal rights for all citizens regardless of caste, creed, religion, or gender.
- Although the **42nd Amendment** introduced the term **"secular"** in the **Preamble,** the Indian State's secular nature was already assured in various constitutional provisions. The State refrains from religious discrimination and does not mandate citizens to financially support any particular religion.
- Every individual is entitled to the freedom of conscience, allowing them to profess, practice, and propagate their religion. The Constitution respects religion as a private matter, prohibiting state intervention. Additionally, it grants various cultural rights to minorities.

❑ **System of Local Self-government**

- In the hierarchy of India's governance structure, Village Panchayats occupy the esteemed position, following the Federal structure and Parliamentary form of government. Their institutionalization, envisioned by **Article 40 of Part IV** and solidified by the **73rd Amendment Act,** marks a significant milestone in India's constitutional history.
- The 73rd Amendment Act establishes a three-tier Panchayat system with reserved seats for marginalized communities and women. It also mandates State-level Election and Finance Commissions. Additionally, the Eleventh Schedule outlines 29 subjects that can be transferred to village Panchayats. The **74th Amendment Act** introduces a similar structure for Nagar Palikas under Part IXA and the XII Schedule.

❑ **Special attention to Scheduled Areas and autonomous provisions related to some States**

- The Fifth and Sixth Schedules of the Constitution address the specific needs of tribals living in different parts of the country.
- The unique cultures of residents in these areas are safeguarded and promoted through provisions granting them autonomy in managing their local regions.

❑ **Affirmative action**

- To address the historical marginalization of Scheduled Castes and Tribes, the Indian Constitution mandates affirmative action measures, including the reservation of public appointments and educational seats for these groups in both Union and State legislatures.
- These measures are designed to ensure the development and welfare of the weaker sections of society, reintegrating them into the mainstream of Indian life.

❑ **Independent Bodies**

- In addition to the federal, state, and local government branches, the Indian Constitution also creates several independent agencies such as the Union Public Service Commission (Article 315), the Comptroller and Auditor General of India (Article 148), and the Election Commission (Article 324).
- Regarded as the pillars of India's democratic governance, constitutional bodies play a crucial role

in upholding and ensuring the proper functioning of democratic processes. They oversee and safeguard constitutional principles like rule of law, sovereignty, separation of powers, checks and balances, Fundamental Rights, and transparency.

CRITICISM OF THE INDIAN CONSTITUTION

- **Borrowed Constitution**
  - Critics labelled the Indian Constitution as borrowed, but the framers made essential modifications to ensure its suitability for Indian conditions, avoiding the shortcomings present in other global constitutions.
    - **Response by Dr. B.R. Ambedkar:** "*One likes to ask whether there can be anything new in a Constitution framed at this hour in the history of the world. More than a hundred years have rolled over when the first written Constitution was drafted. It has been followed by many countries reducing their constitutions to writing. What the scope of a Constitution should be has long been settled. Similarly, the fundamentals of a Constitution are recognized all over the world. Given these facts, all Constitutions in their main provisions must look similar. The only new things, if there can be any, in a Constitution framed so late in the day are the variations made to remove the faults and to accommodate them to the needs of the country. The charge of producing a blind copy of the Constitutions of other countries is based, I am sure, on an inadequate study of the Constitution*".
- **Not rooted in Indian tradition and ethos**
  - Critics argue the Indian Constitution is 'un-Indian' as it does not align with India's political traditions. They believe its foreign nature makes it unsuitable and unworkable in the country.
  - **K. Hanumanthaiya,** a member of the Constituent Assembly, commented: "We wanted the music of Veena or Sitar, but here we have the music of an English band. That was because our Constitution-makers were educated that way".
  - **Lokanath Misra,** another member of the Constituent Assembly, criticized the Constitution as a "slavish imitation of the West, much more - a slavish surrender to the west".
- **Law manual rather than a socio-political document**
  - Critics contend that the legalistic nature and intricate phraseology of the Indian Constitution render it complex, leading **Sir Ivor Jennings** to describe it as a "lawyer's paradise."
  - **H.K. Maheswari,** a member of the Constituent Assembly, observed: "The draft tends to make people more litigious, more inclined to go to law courts, less truthful and less likely to follow the methods of truth and non-violence. If I may say so, the draft is really a lawyer's paradise. It opens up vast avenues of litigation and will give our able and ingenious lawyers plenty of work to do".
- **Length and Complexity**
  - The Constitution's extensive nature makes it difficult to fully comprehend, potentially leading to misinterpretations.
- **Conflict between Directive Principles and Fundamental Rights**
  - Critics argue that the emphasis on Directive Principles sometimes overshadows fundamental rights, causing imbalances in governance.
- **Quasi-Federal Structure**
  - Some argue that the balance of power between the central government and states is skewed, leading to conflicts over jurisdiction and authority.
- **Affirmative action policy**
  - While intended to address historical injustices, reservations have faced criticism for perpetuating social divisions and, in some cases, leading to reverse discrimination.
- **Lack of Uniform Civil Code**
  - Absence of a uniform civil code perpetuates social divisions and hampers the establishment of a truly secular state.
- **Lack of Environmental Focus**
  - Some argue that the Constitution should have stronger provisions related to environmental protection and sustainable development, considering the environmental challenges India faces.

Part	Subject Matter	Articles Covered
I	The Union and its Territories	1-4
II	Citizenship	5-11
III	Fundamental Rights	12-35
IV	Directive Principles of State Policy	36-51
IV A	Fundamental Duties	51 A
V	The Union	52-151

VI	The States	152-237
VII	The States in Part B of First Schedule (REPEALED)	238 (REPEALED)
VIII	The Union Territories	239-242
IX	The Panchayats	243-243 O
IX A	The Municipalities	243 P-243 ZG
IX B	The Co-operative Societies	243 ZH-243 ZT
X	The Scheduled and Tribal Areas	244-244 A
XI	Relation between the Union and the States	245-263
XII	Finance, Property, Contracts and Suits	264-300A
XIII	Trade, Commerce and Intercourse within the territory of India	301-307
XIV	Services Under the Union and the States	308-323
XIV A	Tribunals	323 A-323 B
XV	Elections	324-329 A
XVI	Special provisions relating to certain classes	330-342 A
XVII	Official language	343A-351 A
XVIII	Emergency Provisions	352-360
XIX	Miscellaneous	361-367
XX	Amendment of the Constitution	368
XXI	Temporary, Transitional and Special Provisions	369-392
XXII	Short Title, Commencement, Authoritative Text in Hindi and Repeals	393-395

Schedules	Subject Matter
First Schedule	It contains the name of States and Union Territories Territorial Jurisdiction of states is also included
Second Schedule	The provisions in relation to allowances, privileges, emoluments of: ❑ President of India ❑ Governors of Indian States ❑ Speaker of Lok Sabha & Deputy Speaker of Lok Sabha ❑ Chairman of Rajya Sabha & Deputy Chairman of Rajya Sabha ❑ Speaker and Deputy Speaker of Legislative Assemblies of Indian States ❑ Chairman and Deputy Chairman of Legislative Councils of the Indian States ❑ Supreme Court Judges ❑ High Court Judges ❑ Comptroller & Auditor General of India (CAG)
Third Schedule	It contains the forms of oath and affirmation for: ❑ Union Ministers of India ❑ Parliament Election Candidates ❑ Members of Parliament (MPs) ❑ Supreme Court Judges ❑ Comptroller and Auditor General ❑ State Ministers ❑ State Legislature Elections' Candidates ❑ State Legislature Members ❑ High Court Judges
Fourth Schedule	Allocation of seats in the Rajya Sabha to the states and the union territories
Fifth Schedule	Provisions relating to the administration and control of scheduled areas and scheduled tribes.

Sixth Schedule	Provisions relating to the administration of tribal areas in the states of Assam, Meghalaya, Tripura and Mizoram.
Seventh Schedule	Division of powers between the Union and the States in terms of List I (Union List), List II (State List) and List III (Concurrent List).
Eighth Schedule	Languages recognized by the Constitution. Originally, it had 14 languages but presently there are 22 languages.
Ninth Schedule	It deals with the state acts and regulations of that deal with land reforms and the abolition of the Zamindari system. It also deals with the acts and regulations of the Parliament dealing with other matters.
Tenth Schedule	Provisions relating to the disqualification of the members of Parliament and State Legislatures on the ground of defection.
Eleventh Schedule	Specifies the powers, authority and responsibilities of Panchayats.
Twelfth Schedule	Specifies the powers, authority and responsibilities of Municipalities.

CONCLUSION

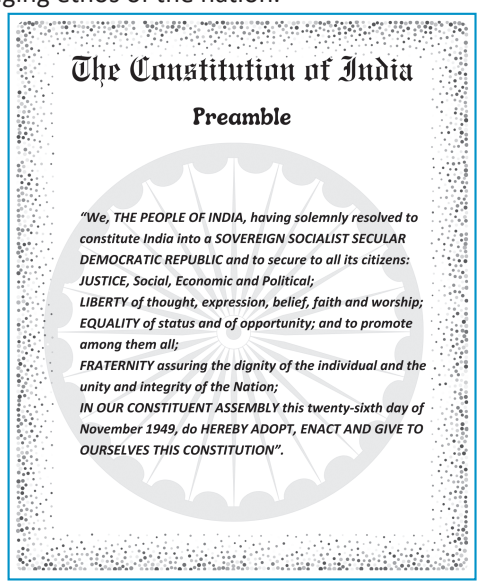
The ingenuity of the Indian Constitution lies in the manner in which it arranges and modifies various constitutional principles according to Indian aspirations. As Dr. B.R. Ambedkar said, "*All Constitutions in their main provisions must look similar. Variations have been made to remove the faults and accommodate the needs of the country*".

Preamble

4

INTRODUCTION

The Preamble is the 'identity card of the Constitution' and offers a 'key to the minds of Constitution makers'. The Preamble finds its roots in the 'Objectives Resolution,' a document crafted by Pandit Nehru and approved by the Constituent Assembly. Over time, it has evolved to reflect the changing ethos of the nation.


The Constitution of India

Preamble

"We, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens: JUSTICE, Social, Economic and Political; LIBERTY of thought, expression, belief, faith and worship; EQUALITY of status and of opportunity; and to promote among them all; FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation; IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION".

Fig. 4.1

NATURE OF THE PREAMBLE

The Preamble serves as an aspirational guide, outlining the fundamental ideals upon which our nation is built. While it may not be enforceable in a court of law and does not grant specific powers to the branches of the State, it acts as a **moral compass,** steering the nation towards justice, liberty, equality, and fraternity.

The Main Ingredients of The Preamble Are As Follows

- It signifies the source of authority of the Constitution namely the **citizens of India.**
- It elucidates the **principles and goals** the Constitution aims to uphold and foster.
- It informs about the nature of the Indian State.
- It also provides the objective of the Constitution, i.e., **justice, liberty, equality,** and **fraternity.**
- It precisely designates the date on which the Constitution was formally adopted i.e., **26th November 1949.**

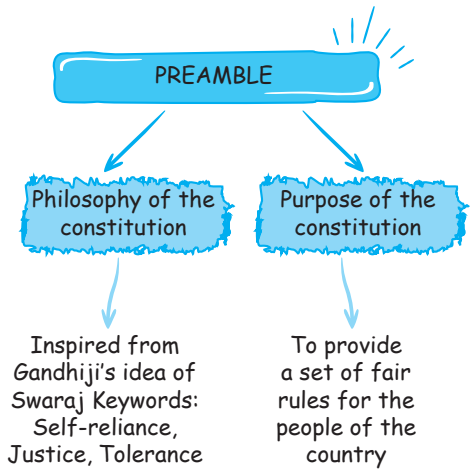

PREAMBLE
Philosophy of the constitution
Purpose of the constitution
Inspired from Gandhiji's idea of Swaraj Keywords: Self-reliance, Justice, Tolerance
To provide a set of fair rules for the people of the country

Fig. 4.2: Preamble

KEYWORDS OF THE PREAMBLE

- **We, the People**
  - The Constitution of India begins with the paramount declaration: **"We, the People,"** which acknowledges the **nation's political sovereignty** vested in its **citizens.**
  - In democratic nations, the pinnacle status belongs to citizens. The phrase "We the people" reflects the wisdom of our founders and emphasizes **citizens as the ultimate source of constitutional authority,** ensuring governance aligns with their well-being.
- **Sovereign**
  - Sovereign refers to "having the highest power or being completely independent."
  - The term 'sovereign' underscores India's complete independence i.e., India is neither a dependancy nor a dominion of any other nation, but an independence state. India operates without any higher authority above it, exercising autonomy in managing both internal and external matters.
  - India's decision to remain in the Commonwealth and the United Nations doesn't impede its sovereignty. These affiliations showcase India's commitment to global collaboration while safeguarding its independence.

- India's sovereignty grants the nation the authority to either annex foreign territories or relinquish parts of its land to other countries based on Internationally accepted laws and norms.
- Constitutional bodies draw their power solely from citizen approval, necessitating continuous support.
- **Article 51A(c)** places the responsibility on citizens to uphold and protect India's **sovereignty, unity, and integrity.**

❑ **Socialist**

- Socialism refers to an economic and political system where the means of production are owned and controlled collectively or by the government, prioritizing social equality.
- Socialism can be mainly categorized into two, i.e., democratic socialism and communistic socialism.
  - Indian socialism, known as democratic socialism, emphasizes a 'mixed economy' where public and private sectors coexist.
  - It stands apart from communistic socialism, which involves the nationalisation of all means of production and distribution and abolition of private property.
  - Democratic socialism, on the other hand, blends Marxism and Gandhian principles, which aims to eradicate poverty, ignorance, disease, and inequality of opportunity.
- India's socialist ideals were embedded within the Constitution's Directive Principles of State Policy even before the explicit inclusion of the term 'socialist' in 1976. This implicit socialist orientation was further solidified by the Congress party's resolution at the Avadi session in 1955, paving the way for concrete measures towards a 'socialistic pattern of society'.
- However critics believe that the socialist identity of the Indian State was weakened by the 1991 Economic Policy, marked by liberalization, privatization, and globalization.

❑ **Secular**

- The term 'Secular', as per the Indian context, means equal treatment of all religions and no discrimination between followers of different religions.
- The term 'secular' was introduced by the 42nd Constitutional Amendment Act of 1976, signifying the establishment of a secular state. **Articles 25 to 28** were incorporated to safeguard the Fundamental Right to Freedom of Religion.
- India's Constitution embodies **positive secularism,** emphasizing the equal status and state support for all religions, irrespective of their size or influence, fostering a diverse and inclusive society.

Parameters	Indian Secularism	Western Secularism
Definition	Indian secularism is the concept that the state should be impartial to all religions and not favour any particular religion.	Western secularism is the concept of separation of church and state.
History	Indian secularism has its roots in the ancient Indian tradition of tolerance and respect for all religions.	Western secularism developed in Europe in the 17th and 18th centuries as a reaction to the religious wars of the Middle Ages.
Role of Religion	Indian secularism allows for the state to participate in religious activities, such as providing financial assistance to religious institutions.	Western secularism generally prohibits the state from participating in religious activities.
Display of religion	Followers of any religion can freely practice the religion.	Open display of religion is not supported except for places of worship.
When the state can interfere	The state shall interfere to remove bad practices from it.	The State does not intervene in the affairs of religion as long as religion is working within the limits of the law.
Code of law	The code of law is unequal, and India's personal laws vary with an individual's religion.	A single, uniform code of law dispenses justice regardless of someone's religious background.
Relation with the law	The law seeks to adjust the multiple religious principles that different religions follow.	Laws are made in isolation from religious principles.
Relationship between religion and society	Indian secularism sees religion as an integral part of Indian society.	Western secularism sees religion as a private matter that should be kept separate from public life.

Focus on inter and intra-religious affairs	Focusing both on intra-religious and inter-religious denominations because Indian society is not homogenous.	Focus is more on intra-religious domination than interreligious due to the religiously homogeneous nature of the State.
Distinction between majority and minority religious rights	Ensures the religious freedom of individuals and provides for the religious freedom of minorities.	Focuses on liberty and equality among the individuals as a whole and often neglects the equality of other religious minorities.
Influence of religious bodies on government	As an implicit control, religious groups could mobilize the vote bank and control the ballot box. They can influence the government in policy-making.	The role of religious bodies is meager in politics

❑ **Democratic**

- The democratic framework, articulated in the Preamble, is built upon the **doctrine of popular sovereignty**, signifying the people's possession of supreme power.
- Democracy comes in two forms: **direct and indirect.**
  - ❒ In **direct democracy**, people exercise power directly, as seen in Switzerland, through devices like **Referendum, Initiative, Recall, and Plebiscite**.
  - ❒ In **indirect democracy**, elected representatives govern and make laws, categorized into **parliamentary and presidential systems**.

Initiative	A citizen-proposed statute can be sent to the legislature for potential enactment or put on the ballot through the initiative process.
Recall	Voters can demand the removal of a public official before the end of their term through a recall, a political tool.
Referendum	The ability of voters to accept or reject legislation, in particular called Referendum.
Plebiscite	A plebiscite vote is a direct popular vote on a significant issue, primarily to establish a more or less permanent political condition.

- The Indian Constitution establishes a **representative parliamentary democracy** where the executive is accountable to the legislature for all policies and actions.
- Universal adult franchise, periodic elections, rule of law, an independent judiciary, and non-discrimination represent India's democratic character.
- The term 'democratic' encompasses **political, social, and economic dimensions of democracy**, reflecting a comprehensive approach.
- **In 1997, the Supreme Court made a relevant observation in the same context:**
  - ❒ The Constitution envisions establishing an egalitarian social order rendering to every citizen social, economic, and political justice in a social and economic democracy of India.

❑ **Republic**

- Within a democratic polity, there are two classifications: **Monarchy** (e.g., Britain), where the head of state is hereditary, and **Republic** (e.g., USA), where the Head of State is elected for a fixed term, either directly or indirectly.
- In a Republic, power is vested in elected representatives, not a monarch. In India, the President, indirectly elected by the people for a fixed five-year term, serves as the head of the State.
- In a Republic, political sovereignty rests with the collective citizenry, ensuring that no individual, such as a king, holds absolute power. Additionally, the absence of a privileged class means that all public offices are accessible to every citizen, fostering equality and inclusivity.

❑ **Justice**

- The term 'justice' in the Preamble encompasses social, economic, and political dimensions. These are safeguarded through various provisions outlined in Fundamental Rights and Directive Principles.
  - ❒ **Social justice** ensures equal treatment for all, regardless of caste, color, race, religion, or gender, with no privileges for any group, focusing on the upliftment of backward classes and women.
  - ❒ **Economic justice** ensures fairness by eliminating discrimination rooted in economic factors. It targets glaring disparities in wealth, income, and property. When social justice and economic justice merge, we get what's known as **'distributive justice.'**
  - ❒ **Political justice** signifies equal political rights, unrestricted entry to all political offices, and an equitable representation of every citizen's voice in the government.
- The notion of justice encompassing social, economic, and political aspects was inspired by the **Russian Revolution of 1917.**

- **Liberty**
  - Liberty grants individuals the freedom to make choices and pursue activities without restrictions. Simultaneously, it provides ample opportunities for personal growth and the development of unique personalities.
  - The Preamble ensures every Indian citizen's **right to think, express, belief, faith, and worship freely**. These Fundamental Rights are legally protected and can be enforced in court if infringed upon.
  - The Preamble underscores liberty's significance in the Indian democratic system, emphasizing its limitations as defined in the Constitution.
  - The ideals of liberty, equality and fraternity in our Preamble have been taken from the **French Revolution (1789-1799)**.
- **Equality**
  - Equality denotes the absence of special privileges for any section of society and the provision of equal opportunities for all individuals without any discrimination.
  - The Preamble secures equal status and opportunities for all citizens of India, encompassing **three essential dimensions of equality: civic, political, and economic**, ensuring a fair and just society.
  - The following provisions of the chapter on Fundamental Rights (Article 14-18) ensure civic equality:
    - Equality before the law (Article 14)
    - Prohibition of discrimination on grounds of religion, race, caste, sex, or place of birth (Article 15).
    - Equality of opportunity in matters of public employment(Article 16).
    - Abolition of untouchability (Article 17).
    - Abolition of titles (Article 18)
  - The Constitution promotes political equality through two provisions: Article 325 prohibits the exclusion of individuals from electoral rolls based on religion, race, caste, or sex, and Article 326 mandates elections to the Lok Sabha and state assemblies based on adult suffrage.
  - The Directive Principles of State Policy (Article 39) secures men and women equal rights to an adequate means of livelihood and equal pay for equal work.
- **Fraternity**
  - As per Dr. B. R. Ambedkar, "Fraternity is the sentiment of shared brotherhood and sisterhood among all Indians".
  - The Indian Constitution promotes fraternity through the system of single citizenship and the Fundamental Duties (Article 51A (e)), which emphasize the duty of every citizen to cultivate harmony and common brotherhood among all Indians, transcending differences.
  - According to the Preamble, fraternity safeguards individual dignity and national unity; the term 'integrity' was added through the 42nd Constitutional Amendment in 1976.
  - Prominent constitutional expert Prof. D.D. Basu believes that Fraternity will be achieved not only by abolishing untouchability amongst the different sects of the same community but also by abolishing all communal or sectional or even local or provincial anti-social feelings that stand in the way of unity of India.
  - The phrase 'unity and integrity of the nation' addresses both psychological and territorial aspects of national integration. Article 1 declares India as a 'Union of States,' emphasizing the indivisibility of the Indian Union and aiming to combat obstacles like communalism, regionalism, casteism, linguism, and secessionism.

SIGNIFICANCE OF THE PREAMBLE

- The Preamble encapsulates the fundamental philosophy and values, both political and moral, that underpin the Constitution. It serves as the visionary essence of the Constituent Assembly and mirrors the aspirations of our founding fathers.
- As per the Preamble, the Constitution was enacted, adopted, and bestowed upon themselves by the people of India. It underscores that the Constitution's authority stems from the people, indicating that ultimate sovereignty rests with them.
- According to **K.M. Munshi:** the Preamble is the 'horoscope of our sovereign democratic republic'.
- In the Preamble, the intended rights and freedoms for all citizens are outlined, along with the methods for their realization.
- Although non-binding, the Preamble assists in interpreting the Constitution when its language is not clear.
- **Sir Ernest Barker** described the Preamble as the 'key note' to the Constitution
  - In famous **Kesavananda Bharati** case, **Justice Sikri** observed, "It seems to me that the Preamble of our Constitution is of extreme importance and the Constitution should be read and interpreted in the light of the grand and noble vision expressed in the Preamble".
  - The Preamble stands as a beautifully worded prologue to India's Constitution, encapsulating its core ideas and objectives. It serves as a guiding light, justifying the detailed arrangements within the Constitution.

PREAMBLE AS PART OF THE CONSTITUTION

The status of the Preamble as an integral part of the Indian Constitution remains a subject of ongoing debate and interpretation:

- **Berubari Union Case, 1960**
  - The Supreme Court recognized the Preamble as a **key to the framers' intentions.** When words are ambiguous, it helps in providing clarity. Despite this, Justice Gajendragadkar emphasized that it is **not part of the Constitution** and does not confer substantial power on state organs.
  - The Preamble served as a reference under **Article 143(1)** of the Constitution for implementing the Indo-Pakistan Agreement regarding the Berubari Union and exchanging enclaves. This was decided by an eight-judge bench.
- **Golak Nath Vs State of Punjab, 1967**
  - According to Justice Hidayatullah, the Preamble embodies enduring principles upon which the Government functions, constituting the eternal and unalterable essence of the Constitution.
- **Kesavananda Bharati Case, 1973**
  - In the landmark judgment, a full bench of the Supreme Court comprising 13 judges was convened for the first time to hear a writ petition.
    - The Preamble, although not the ultimate source of power, serves as a valuable tool in understanding the intricacies of statutes and provisions within the Constitution.
    - **Justice Sikri** held that the Preamble was not just a part of the Constitution but also of extreme importance, and the Constitution should be read and interpreted in the light of the grand and noble vision expressed in the Preamble. Any provisions of the Constitution could be amended under article 368 only within the broad contours of the Preamble and of the Constitution.
- **LIC of India case, 1995**
  - The Supreme Court again held that the Preamble is an integral part of the Constitution.

The Preamble, akin to other constitutional elements, was meticulously crafted by the Constituent Assembly after finalizing the remaining sections of the Constitution. The strategic decision to include the Preamble at the end was to ensure its alignment with the Constitution adopted by the Constituent Assembly.

The President of the Constituent Assembly said, 'The question is that Preamble stands part of the Constitution'. The motion was then adopted. Hence, the current opinion held by the Supreme Court that the Preamble is a part of the Constitution is in consonance with the opinion of the founding fathers of the Constitution. However, two things should be noted:

- The Preamble is neither a source of power to the legislature nor a prohibition upon the powers of the legislature.
- It is non-justiciable; that is, its provisions are not enforceable in courts of law.
- Preamble is a part of the Constitution but has no legal effect independently of other parts.

AMENDABILITY OF THE PREAMBLE

- The **Kesavananda Bharati Case (1973)** ignited the debate on whether the Preamble falls under the purview of Article 368's amendment power.
- While the Preamble was acknowledged as an integral part of the Constitution, the Supreme Court recognized the need for flexibility in its modification. It overturned its previous stance tendered in the **Berubari Union case (1960)** and affirmed that the Preamble can be amended, provided it does not compromise the Constitution's 'Basic Structure'.
- The Preamble has been amended only once so far, in 1976, by the **42nd Constitutional Amendment Act**, adding three new words–**Socialist, Secular, and Integrity**–to the Preamble. This amendment was upheld by the Kesavananda Bharati case.

LIMITATIONS OF THE PREAMBLE IN JURISPRUDENCE

- It is essential to note that the Preamble does not serve as a source of substantive governmental power and does not impose limitations on the Executive, Legislature, or Judiciary.
- The Preamble cannot override explicit Constitutional provisions and lacks enforceability in courts.
- The Preamble helps when there is ambiguity in the Constitution.

IGNITE YOUR MIND

Find out the other democratic countries of the world whose preamble begin with the phrase 'We The People'.

CONCLUSION

Over the years, the ideals and aspirations of the Preamble have guided the nation's developmental trajectory. India has taken long strides towards these ideals. A more focused approach and vigour are needed to achieve these social, political, and economic goals outlined in the Preamble.

System of Government

5

INTRODUCTION

The system of government outlines how authority is divided between the legislature and executive, indicating the specific type of governance embraced by a country. This arrangement is determined by the distribution of powers within the government. Different nations adopt diverse government systems and in the case of India, the Constitution establishes a Parliamentary form of government.

MEANING AND MANDATE OF GOVERNMENT

Government is the system or group of individuals who exercise authority and control over a specific territory and its citizens Governments are in charge of making and enforcing laws, rules, and regulations, managing public affairs, and providing essential services and infrastructure to their citizens. Governments play a central role in maintaining order, regulating societal interactions, and representing the interests of the state on the national and international stage.

Some Key Characteristics and Functions of Government are Given Below

- **Authority:** Governments have the legitimate power to make and enforce laws within their jurisdiction, which can be derived from various sources, including Constitution, elections, traditions, or force.
- **Territorial Jurisdiction:** Governments have defined geographical boundaries within which they enforce their laws and authority. These boundaries can range from local governments to national governments.
- **Functions and Services:** Governments provide essential services to their citizens, such as education, healthcare, transportation infrastructure, defense, etc. They also regulate various aspects of society, including the economy, public safety, and environmental protection.
- **Law-making:** Governments create and enact laws such as laws related to civil rights, taxation, criminal justice, and business regulations.
- **Enforcement:** They have the authority to enforce laws through law enforcement agencies, such as the police and judiciary.
- **Foreign Relations:** Governments engage in diplomacy and international relations, representing the state's interests in interactions with other countries. They negotiate various treaties, engage in trade agreements, and participate in international organizations.
- **Taxation:** They collect taxes from individuals and businesses to fund public services and infrastructure projects.
- **Defence and Security:** They are responsible for national defense and security. Thus, they maintain armed forces and law enforcement agencies to protect the state from external threats and maintain internal order.
- **Policy-making:** Governments formulate policies and strategies to address the challenges of society and achieve specific goals. These policies can encompass areas like healthcare, education, economic development, and social welfare.

TYPES OF GOVERNMENT

Government is classified into **Unitary and Federal** forms of government on the basis of the nature of relations between the union government and the regional governments.

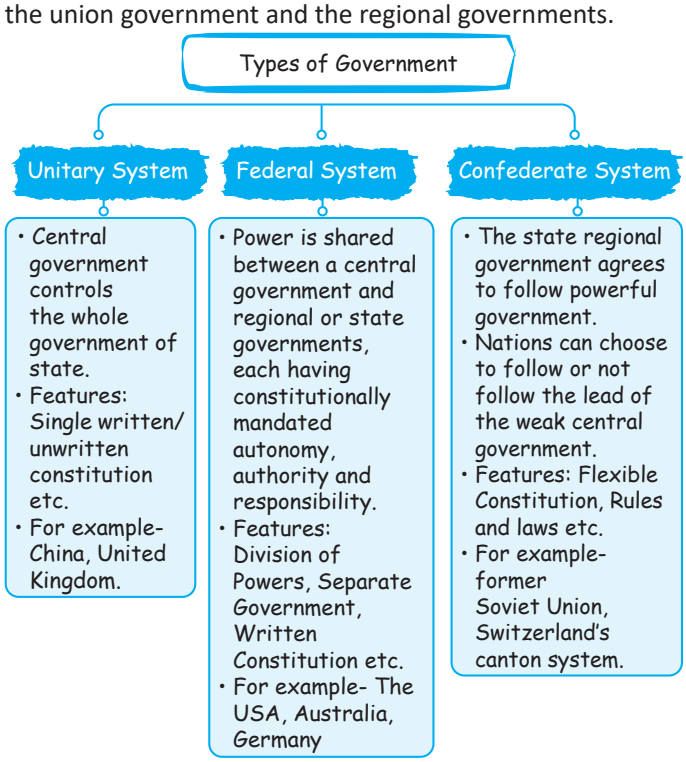

Types of Government
Unitary System
Federal System
Confederate System
• Central government controls the whole government of state.
• Features: Single written/ unwritten constitution etc.
• For example- China, United Kingdom.
• Power is shared between a central government and regional or state governments, each having constitutionally mandated autonomy, authority and responsibility.
• Features: Division of Powers, Separate Government, Written Constitution etc.
• For example- The USA, Australia, Germany
• The state regional government agrees to follow powerful government.
• Nations can choose to follow or not follow the lead of the weak central government.
• Features: Flexible Constitution, Rules and laws etc.
• For example- former Soviet Union, Switzerland's canton system.

Fig. 5.1: Types of Government

- **Federal Government:** In this form of government, powers are divided between the national government

and the regional governments by the Constitution itself and both operate in their respective jurisdictions independently.

- The word **'Federation'** is derived from the Latin word "foedus" which means 'treaty' or 'agreement.' Thus, a federation is a new state or political system formed through a treaty or an agreement between the various states or republics.
- In this form of government, the national government is known as the Federal government or the Central government or the Union government and the regional government is known as the State Government or the Provincial government.
- Countries with a federal form of government include the **USA, Switzerland, Canada, Russia, Brazil, Australia, Argentina, etc.**

❑ **Unitary Government:** In this form of government, all the powers are vested in the national government, and the regional governments derive their authority from the national government. For example- **Britain, France, China, Italy, Belgium, Japan, Norway, Spain, Sweden, etc.**

Features of Federal and Unitary Government

Table 5.1

Federal Government	Unitary Government
Dual Government (Union and Provincial level).	Single Government
Written Constitution	The Constitution may be written (France) or unwritten (Britain).
Division of powers between the union and regional government.	No division of powers. All powers are vested in the union government.
Supremacy of the Constitution	The Constitution may be supreme (Japan) or may not be supreme (Britain).
Independent Judiciary	Judiciary may be independent or may not be independent.
Rigid Constitution	The Constitution may be rigid (France) or flexible (Britain).
Bicameral legislature	Legislature may be bicameral (Britain) or unicameral (China).

SYSTEM OF GOVERNMENT IN INDIA

The Indian Constitution provides for a quasi-federal system of government in the country. The framers of the Constitution adopted the federal system due to socio-cultural diversity and the large size of the country.

The term **'federation' has nowhere been mentioned** in the Constitution. In fact, **Article 1** of the Constitution describes India as a **'Union of States'.**

India Resembles The Canadian Federation In Three Ways

❑ Its formation (i.e., by way of Disintegration);

❑ Its preference for the term 'Union' (the Canadian Federation is also called a 'Union'); and

❑ Its centralising tendency vesting residuary powers in the Centre **(Example: Cyber Laws).**

FEDERAL FEATURES OF THE INDIAN CONSTITUTION

The federal features of the Indian Constitution are explained below:

According to **Dr. B.R. Ambedkar,** the phrase **'Union of States'** has been preferred to 'Federation of States' to indicate two things:

a) The Indian federation is not the result of an agreement among the states like the American federation; and

b) The states have no right to secede from the federation.

❑ **Dual Polity:** The Indian Constitution establishes a dual polity which consists of the Union at the Centre and the States. The Union government at the centre deals with matters of national importance like defence, foreign affairs, currency, and so on. The state government, on the other hand, deals with matters of regional and local importance like public order, agriculture, health, local government and so on.

❑ **Written Constitution:** The Indian Constitution is not only a written document but the **lengthiest Constitution** in the world. At present, it consists of a Preamble, about 470 Articles (divided into XXV Parts) and 12 Schedules. It prescribes the jurisdiction within which both the centre and state must perform functions.

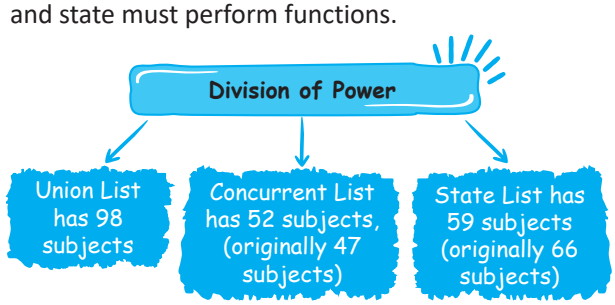

Division of Power
Union List has 98 subjects
Concurrent List has 52 subjects, (originally 47 subjects)
State List has 59 subjects (originally 66 subjects)

Fig. 5.2: Power list of government

❑ **Division of Powers:**

- Both the Centre and the states can make laws on the subjects of the **concurrent list,** but in case of a conflict, the law made by the centre prevails. The

subjects which are not mentioned in any of the three lists (i.e. **Residuary subjects**) are given to the Centre.

- **Supremacy of the Constitution:** The Constitution is the supreme law of the land. The laws enacted by the Centre and the states must conform to its provisions. The organs of the government such as legislative, executive and judicial at both levels must operate within the jurisdiction prescribed by the Constitution. Otherwise, they can be declared invalid through judicial review.
- **Rigid Constitution:** The Indian Constitution is rigid because the provisions which are concerned with the federal structure require special procedures for its amendment.

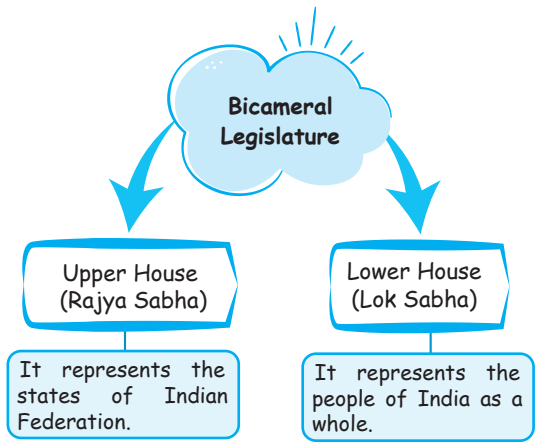

Bicameral Legislature
Upper House (Rajya Sabha)
Lower House (Lok Sabha)
It represents the states of Indian Federation.
It represents the people of India as a whole.

Fig. 5.3: Bicameral legislature

- **Bicameralism:** The Parliament of India is bicameral, consisting of the Lok Sabha (House of the People) and the Rajya Sabha (Council of States). The Rajya Sabha represents the States and serves to protect their interests at the national level.
- **Independent Judiciary:** The Indian Constitution contains measures like security of tenure to judges, fixed service conditions etc., to make the judiciary independent of the government. It establishes an independent judiciary headed by the Supreme Court for two purposes:
  - To protect the supremacy of the Constitution by exercising the power of judicial review, and
  - To settle the disputes between the Centre and the States or between the States.

UNITARY FEATURES OF THE CONSTITUTION

- **Strong Centre:**
  - The Union List of the seventh schedule contains more subjects than the State List.
  - The Union List contains more important subjects.
  - The Centre has overriding authority over the Concurrent List.
  - The Centre has given residuary powers.

- Till 2019, the erstwhile state of Jammu and Kashmir enjoyed a special status by virtue of Article 370 of the Constitution of India.
- Jammu and Kashmir had its own Constitution.

- **Single Constitution:** The Indian Constitution embodies not only the Constitution of the Centre but also those of the states.
- **No Equality of State Representation:** In India, the states are given representation in the Rajya Sabha on the basis of population. In the US, on the other hand, the **principle of equality of representation of states in the Upper House** is fully recognised, meaning equal representation irrespective of population.
- **States Not Indestructible:** Indian states have no right to territorial integrity. The Parliament can alone change the area, boundaries or name of any state. Hence, the Indian Federation can be referred to as **"an indestructible Union of destructible states"**. The American Federation, on the other hand, is **"an indestructible Union of indestructible states"**.
- **Flexible Constitution:** In the Indian Constitution the process of Constitutional amendment is less rigid than other federations. The bulk of the **Constitutional provisions can be amended** by the unilateral action of the Parliament, either by simple majority or by special majority. Further, only the Centre has the power to initiate an amendment to the Constitution.
- **Emergency Provisions:** During an emergency situation, the **Centre becomes all-powerful** and the states go into total control of the Central government. It converts the federal structure of the government into a unitary one without any formal amendment of the Constitution.
- **Single Citizenship:** The Indian Constitution embraces a single citizenship system, ensuring that all citizens, regardless of their birthplace or current residence, have equal rights throughout the entire country.
- **Integrated Judiciary:** The Constitution of India has instituted **a unified judicial system**, with the Supreme Court positioned at the apex. This singular court system is responsible for upholding both Central and state laws.
- **All-India Services:** In India, the Centre and the states have their separate public services. But, in addition to this, there are **All-India Services** (IAS, IPS, and IFS) which are common to both the Centre and the states. The members of these all-India services are recruited and trained by the Centre which also possesses ultimate control over them.
- **Integrated Audit Machinery:** The **Comptroller and Auditor-General (CAG) of India** audits the accounts of both the Central government and State Governments. However, his appointment and removal is done by the President without the states' consultation.

- **Governor's Appointment:** The Governor is appointed by the President and holds office during the pleasure of the President. He also acts as a representative of the Centre.
- **Parliament's Jurisdiction over the State List:** The Parliament holds the authority to enact legislation on any matter listed under the State List if the Rajya Sabha passes a resolution to that effect in the national interest.
- **Integrated Election Machinery:** The Election Commission of India conducts elections to both the Central legislature and State legislatures. The states do not have any role to play with respect to the composition and other decisions of the Election Commission.
- **Veto Over State Bills:** The Governor has the authority to reserve specific categories of bills approved by the State legislature for the consideration of the President. The President can withhold approval for such bills not only initially but also upon re-submission.

Table 5.2: Constitution Features of Federal and Unitary Government

Federal Features of The Constitution	Unitary Features of The Constitution
Dual Polity	Strong Centre
Written Constitution	Single Constitution
Division of Powers	No Equality of State Representation
Supremacy of the Constitution	States Not Indestructible
Rigid Constitution	Flexibility of the Constitution
Bicameralism	Emergency Provisions
Independent Judiciary	Integrated Judiciary
	Single Citizenship
	All-India Services

CRITICAL EVALUATION OF THE FEDERAL SYSTEM

The Constitution of India has deviated from the various traditional federal systems like the US, Switzerland and Australia and incorporated a large number of unitary features, tilting the balance of power in favour of the Centre. Thus, many Constitutional experts have different views on the federal character of the Indian Constitution.

- **K C Wheare** described the Constitution of India as **"quasi-federal".**
- **K Santhanam** mentioned two factors responsible for increasing the unitary bias (tendency of centralisation) of the Constitution. These are:
  - the dominance of the Centre in financial matters and the reliance of the states upon the Central grants; and
  - influence of a robust former planning commission that directed developmental processes in the states.
- **Morris Jones** termed Indian federalism as a "bargaining federalism".
- **Ivor Jennings** has referred to it as a "federation with a strong centralising tendency".
- **Dr. B.R. Ambedkar** observed: "The Constitution is a Federal Constitution in as much as it establishes a dual polity. The Union is not a league of states, united in a loose relationship, nor are the states the agencies of the Union, deriving powers from it. The Constitution creates both the Union and the states, both derive their respective authority from the Constitution."

Dr. B.R. Ambedkar's speech in the Constituent Assembly on 25.11.1949

While replying to the criticism of over-centralisation in the Constitution, he stated: "*A serious complaint is made on the ground that there is too much centralisation and the states have been reduced to municipalities. It is clear that this view is not only an exaggeration but is also founded on a misunderstanding of what exactly the Constitution contrives to do. As to the relations between the Centre and the states, it is necessary to bear in mind the fundamental principle on which it rests. The basic principle of federalism is that the legislative and executive authority is partitioned between the Centre and the states not by any law to be made by the Centre but by the Constitution itself. This is what the Constitution does. The states are in no way dependent upon the Centre for their legislative or executive authority. The states and the Centre are coequal in this matter. It is difficult to see how such a Constitution can be called centralism. It is, therefore, wrong to say that the states have been placed under the Centre. The Centre cannot by its own will alter the boundary of this partition. Nor can the judiciary*".

- **In the S.R. Bommai v. Union of India case (1994)**, the Supreme Court laid down that the Constitution is federal and characterised federalism as the **'Basic Structure of Indian Constitution.'**
  - It was noted that within the framework of our Constitution, while the Centre is endowed with greater authority compared to the states, states **are not mere extensions of the Centre**.
  - States possess an **independent Constitutional existence**; they are not subordinate entities or representatives of the Centre. Within their designated sphere, states hold supreme authority.
  - The fact that during an emergency or certain other eventualities, the Centre may temporarily override states' powers, but it does not negate the essential federal nature of the Constitution. These instances are exceptions and not the rule.
  - It is important to emphasise that federalism in the Indian Constitution is not a matter of administrative convenience but a principled stance—an outcome of our own Constitutional process and a recognition of the practical realities on the ground.

Indian federalism represents a compromise between the following two conflicting considerations i.e. Separation of powers under which states enjoy autonomy within their spheres during normal circumstances, and the need for national integrity and a strong central government under exceptional circumstances.

PARLIAMENTARY SYSTEM IN INDIA

The Indian Constitution provides for a parliamentary form of government, both at the Centre **(Articles 74 and 75)** and in the states **(Articles 163 and 164).**

In the Parliamentary system of government, the executive is **responsible to the legislature** for its policies and acts. This system of government is also known as **cabinet government or responsible government or Westminster model of government**. Britain, Japan, Canada, and India have a Parliamentary form of government.

Features of Parliamentary Government

Cabinet System: Ivor Jennings called the parliamentary system as 'cabinet system' because cabinet acts as the nucleus of power in a parliamentary system.

Responsible government: It is referred so, because the cabinet (the real executive) is accountable to the Parliament and stays in office so long as it enjoys the latter's confidence.

Westminster model of government: It was named after the location of the British Parliament, where the parliamentary system originated.

- **Nominal and Real Executives:** The President is the nominal executive **(de jure executive or titular executive)** while the Prime Minister is the real executive **(*de facto* executive)**. It means the President is the head of the State, and the Prime Minister is the head of the government.
- **Majority Party Rule:** The political party which secures majority seats in the Lok Sabha forms the government and the leader of that party is appointed as the Prime Minister by the President; other ministers are appointed by the President on the advice of the Prime Minister.

Note: When no single party gets the majority in the Lok Sabha, a coalition of parties may be invited by the President to form the government.

- **Collective Responsibility:** The ministers are collectively responsible to the Parliament in general and to the Lok Sabha in particular **(Article 75)**. They act as a team and **swim and sink together.** It implies that the Lok Sabha can remove the ministry (i.e., council of ministers headed by the Prime Minister) from office by passing a **vote of no confidence**.
- **Political Homogeneity:** Usually, the ministers belong to the same political party, and hence they share the same political ideology.
- **Double Membership:** The ministers are members of both the legislature and the executive. The Constitution stipulates that a minister who is not a member of the Parliament for six consecutive months ceases to be a minister.
- **Dissolution of the Lower House:** The President on the recommendation of the Prime Minister can dissolve the lower house of the Parliament (Lok Sabha) before the expiry of its term and hold fresh elections. This means that the executive enjoys the right to get the legislature dissolved in a parliamentary system.
- **Secrecy:** The ministers operate on the principle of secrecy of procedure and cannot disclose information about their proceedings, policies and decisions. They take the oath of secrecy administered by the President, before entering their office.

Merits of the Parliamentary System

- **Harmony Between Legislature and Executive:** It establishes harmonious relationships and cooperation between the legislative and executive organs of the government. The executive is very much part of the legislature which reduces the scope for disputes and conflicts between the two organs.
- **Responsible Government:** By its very nature, the parliamentary system establishes a responsible government in which the ministers are responsible to the Parliament for all their acts of omission and commission. The Parliament exercises control over them through various devices like question hour, adjournment motions, discussions, no-confidence motions, etc.

- **Prevents Despotism:** Under the parliamentary system, the executive power is vested in a group of individuals i.e. council of ministers. This dispersal of power checks the dictatorial tendencies of the executive.
- **Ready Alternative Government:** If the ruling party loses its majority, the Head of the State has the authority to invite the opposition party to assume government formation. This allows for the establishment of an alternative government without the necessity for new elections. As noted by Dr. Ivor Jennings, a renowned constitutional scholar, "The Leader of the Opposition is the alternative Prime Minister," emphasizing the significant role the opposition leader plays in the event of a government losing its majority.
- **Wide Representation:** In this system, the executive consists of ministers who are representatives of the people. Hence, the system provides representation to all sections and regions in the government.

❑ **Demerits of Parliamentary System**

H.J. Laski: The parliamentary system gives the executive an opportunity for tyranny.

Ramsay Muir: A former British Prime Minister, also complained of the 'dictatorship of the cabinet.

- **Unstable Government:** The parliamentary system does not ensure a stable government. The continuity and survival of the ministers depend on the mercy of the majority legislators. A no-confidence motion or political defection or evils of the multiparty coalition can make the government unstable. For example, the Governments headed by Morarji Desai, V.P. Singh, Chandra Sekhar, Deva Gowda, Charan Singh, and I.K. Gujral could not complete their mandated term of 5 years.
- **No Continuity of Policies:** This system is not conducive to the formulation and implementation of long-term policies due to the uncertainty of the tenure of the government. For example, In 1977, the **Janata Government** headed by Morarji Desai reversed a large number of policies of the previous Congress Government.
- **Dictatorship of the Cabinet:** The cabinet becomes autocratic when the ruling party enjoys absolute majority in the Parliament.
- **Against Separation of Powers:** In this system, the legislature and the executive together, are inseparable. The cabinet acts as the leader of the legislature as well as the executive. Therefore, the whole system of government goes against the letter and spirit of the **theory of separation of powers**.
- **Government by Amateurs:** The system is not conducive to administrative efficiency as the ministers are not experts in their fields. The Prime Minister has a limited choice and his choice is restricted to the members of Parliament alone and does not extend to external talent. Moreover, the ministers spend most of their time in parliamentary work, cabinet meetings, and party activities.

IGNITE YOUR MIND

Can you think of the manner in which Separation of Powers is ensured in the parliamentary form of government?

REASON FOR ADOPTING THE PARLIAMENTARY SYSTEM

❑ **Familiarity with the System:** The Constitution-makers were familiar with the parliamentary system as it had been in operation in India during the British rule.

- **K.M. Munshi:** *'For the last thirty or forty years, some kind of responsibility has been introduced in the governance of this country. Our Constitutional traditions have become Parliamentary. After this experience, why should we go back and buy a novel experience?*

❑ **Preference to More Responsibility: Dr. B.R. Ambedkar** pointed out in the Constituent Assembly that '*a democratic executive must satisfy two conditions: stability and responsibility.*'

❑ **Avoidance of Legislative–Executive Conflicts:** The Constitution-makers wanted to avoid the conflicts between the legislature and the executive which are bound to occur in the Presidential system. According to them, an infant democracy like India could not afford to take the risk of a perpetual cleavage, and conflict between these two organs of the government. They sought a form of government that would be conducive to the manifold development of the country.

❑ **Representation:** India is one of the most complex plural societies in the world. Hence, the parliamentary system was adopted which represented various sections, interests, and regions in the government. The Parliament System is a better representative system as it involves elections in the country by dividing it into many small constituencies.

Table 5.3: Distinction Between Indian And British Models

India	Britain
Republican system	Monarchical system
Parliament is not supreme in India and enjoys limited and restricted powers. India believes in Constitutional Supremacy.	Based on the doctrine of the Sovereignty of Parliament. Parliamentary sovereignty in Britain asserts that Parliament holds supreme legal authority, enabling it to create, amend, or repeal any law without Constitutional constraint.
The Prime Minister may be a member of any of the two Houses of Parliament.	The Prime Minister should be a member of the Lower House (House of Commons).
A person who is not a member of Parliament can also be appointed as minister, but for a maximum period of six months.	The members of Parliament alone are appointed as Ministers.
No such system of legal responsibility. Unlike in Britain, the ministers in India are not required to countersign the official acts of Government	The system of legal responsibility of the minister.
No such institution.	Institution of 'Shadow cabinet'. It is formed by the opposition party to balance the ruling cabinet and to prepare its members for future ministerial office.

PRESIDENTIAL SYSTEM

In the Presidential system of government, the executive is not responsible to the legislature for its policies and acts and is Constitutionally independent of the legislature in respect of its term of office. This system of government is also known as the non-responsible or fixed executive system of government. The system is prevalent in the USA, Brazil, Russia, etc.

IGNITE YOUR MIND

Why did India, a diverse and complex nation, choose the Westminster system of governance known for its British roots, and what are the implications of this choice on India's democratic evolution?

❑ Features of Presidential Government:

- **Single Executive:** The President is both the head of the State and the head of Government.
- **President elected for a fixed term:** The President is elected by an electoral college for a fixed tenure. He cannot be removed by the Legislature except by impeachment for a grave unconstitutional act.
- **Domination of President:** The President governs with the help of a cabinet or a smaller body called **'Kitchen Cabinet'** which is only an advisory body and consists of non-elected departmental secretaries. These members are selected and appointed by him, are responsible only to him, and can be removed by him at any time.
- **No Responsibility For Legislature:** The President and his secretaries are not responsible to the legislature for their acts.
- **No Dissolution of Lower House:** The President cannot dissolve the House of Representatives.
- **Separation of Power:** The doctrine of separation of powers is the basis of the Presidential system where the legislative, executive, and judiciary powers are separated and vested in the three organs of the government.
- **Single Membership:** The President and his secretaries neither possess membership in the Congress (legislature) nor attend its sessions.
- **Political Homogeneity may not exist:** The Presidential system does not adhere to the **principle of homogeneity** in the cabinet as members can be from different political parties.

Table 5.4

	Parliamentary System	Presidential System
Merits	❑ Harmony between legislature and executive ❑ Responsible government ❑ Prevents despotism ❑ Wide representation	❑ Stable government ❑ Definiteness in policies ❑ Based on separation of powers ❑ Government by experts

Demerits	❑ Unstable government ❑ No continuity of policies	❑ Conflict between legislature and executive ❑ Non-responsible government ❑ May lead to autocracy ❑ Narrow representation

SHOULD WE ADOPT THE PRESIDENTIAL SYSTEM?

The question of whether to persist with the parliamentary system or transition to the Presidential system has been a subject of discussion and debate in our country since the 1970.

Swaran Singh Committee: It was appointed by the Congress government in 1975 to enquire into whether the parliamentary should be continued or should be replaced by the presidential system. The committee opined that the parliamentary system has been doing well and hence, there is no need to replace it by the presidential system.

Arguments in Favour of the Presidential System

- **Stable Executive:** It establishes a stable executive that does not depend upon the uncertain will of the legislature, especially in the case of coalition governments.
- **Preference to ability:** The President can appoint anyone as secretary, equivalent to a minister. Posts are not limited to those who are electable rather than those who are able.
- **Effective Checks and Balances:** The system prevents abuse of power by allowing the two structures - the presidency and the legislature, to monitor and check each other.
- **Swift decision-making:** The Presidential system of government provides quick decision-making.

Arguments Against the Presidential System

- **Lack of Cooperation:** It fails to ensure cooperation between legislature and executive. Frequent conflicts between the lawmaker and the administrator may lead to deadlocks.
- **Autocratic:** The system centralises power in one individual, unlike the parliamentary system, where the Prime Minister is the first among equals in the parliamentary system. Giving authority to one individual, as in the Presidential system, is dangerous for democracy.
- **Issue of Governance:** If the legislature is dominated by the same party to which the President belongs, he may prevent any move from the legislature.
- **Against the Basic Structure of the Constitution:** Shifting to the Presidential system is not possible under our present Constitutional setup as the parliamentary form of government is part of the 'basic structure' doctrine propounded by the Supreme Court.
- **Affecting Pluralism:** India is a diverse country that cannot function without consensus-building.

IS THE INDIAN POLITY INCREASINGLY TRANSITIONING TOWARDS PRESIDENTIAL FORM?

There is an opinion among scholars that India is witnessing increasing Presidentialization of its Parliamentary system in recent times. This concern has been raised because:

Cohabitation: In a semi-presidential system, the president and the prime minister may sometimes be from different political parties. This is called "Cohabitation". It can create either an effective system of checks and balances, or a period of bitter and tense stonewalling, depending on the attitudes of the two leaders, the ideologies of parties, and the demands of their supporters.

- Style of leadership is changing. It is alleged that the executive is becoming centralised in its functioning. According to critics, the executive decisions are being made by a few individuals rather than the cabinet/ council of ministers.
- The system of elections is increasingly becoming centred around the cult of individual leadership.
- The ability of parliament to hold the executive accountable has been decreasing due to weak opposition, frequent disruptions, etc.
- Appointment of people (like ex-bureaucrats, who have not contested direct elections) as ministers is similar to the Presidential system (spoils system)

However, the notion that India is shifting towards a Presidential system of government cannot said to be true because:

- India has a strong parliamentary tradition and institutions like the supreme court to protect democratic parliamentary credentials.
- SC has declared a parliamentary form of government as part of the basic structure of the Constitution.
- Parliament and its committees have held the executive accountable by raising questions, debating policy of executives and informing the public about various issues.
- Even when outsiders are given ministerial births, they must become members of Parliament within 6 months. For example: S. Jaishankar was nominated to Rajya Sabha.

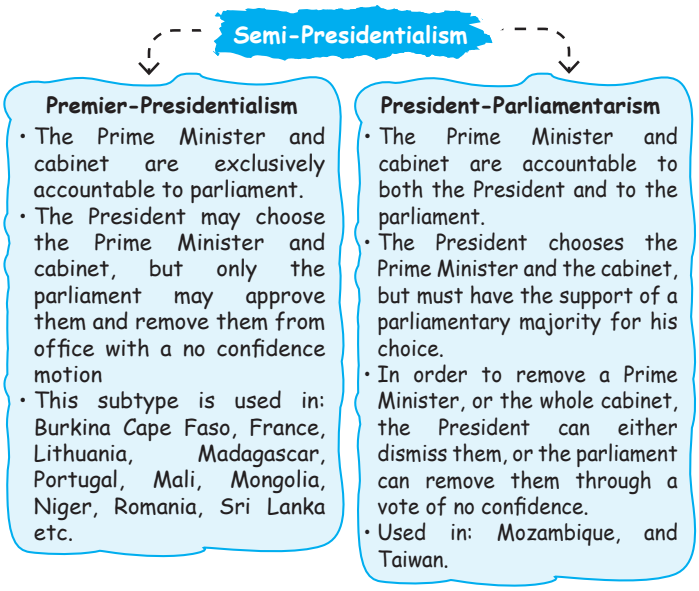

Semi-Presidentialism
Premier-Presidentialism
• The Prime Minister and cabinet are exclusively accountable to parliament.
• The President may choose the Prime Minister and cabinet, but only the parliament may approve them and remove them from office with a no confidence motion
• This subtype is used in: Burkina Cape Faso, France, Lithuania, Madagascar, Portugal, Mali, Mongolia, Niger, Romania, Sri Lanka etc.
President-Parliamentarism
• The Prime Minister and cabinet are accountable to both the President and to the parliament.
• The President chooses the Prime Minister and the cabinet, but must have the support of a parliamentary majority for his choice.
• In order to remove a Prime Minister, or the whole cabinet, the President can either dismiss them, or the parliament can remove them through a vote of no confidence.
• Used in: Mozambique, and Taiwan.

Fig. 5.7: Semi-Presidential System

Although certain centralising tendencies have been witnessed, it would be unwise to say that India is transitioning from a parliamentary to a presidential system. A strong majority in parliament has led to an apprehension of the presidential Prime Minister. However, apart from Parliament, Election Commission, Judiciary etc., strong civil society and media have been able to ensure that PM and Council of Ministers remain accountable to the parliament in general and Lok Sabha in particular

SEMI-PRESIDENTIAL

A Semi-Presidential system of government incorporates features from both Parliamentary and Presidential systems.In this system, the Head of the State is the President directly elected by the people, whilst the head of government is the Prime Minister nominated by the President but can be dismissed by the legislature. Example: **France and Sri Lanka**

Table 5.5: Merits and Demerits of Semi-Presidential System

Merits	Demerits
❑ Parliament has the authority to remove an unpopular Prime Minister, therefore **maintaining stability** throughout the President's fixed term. ❑ In most of the semi-Presidential systems, important segments of bureaucracy are taken away from the President, creating additional **checks and balances** where the running of the day-to-day government and its issues are separate from the head of state. ❑ Having an independent head of government who must secure the confidence of the Parliament is perceived as being **more aligned with the political and economic development** of the country.	❑ The system **provides cover for the President**, as unpopular policies could be blamed on the Prime Minister, who runs the day-to-day operations of the government. ❑ It **creates confusion towards accountability**, as there is no relatively clear sense of who is responsible for policy successes and failures. ❑ It creates both **confusion and inefficiency in the legislative process**, since the capacity of votes of confidence makes the Prime Minister respond to the parliament

7TH SCHEDULE AND REFORMS

The 7th schedule under **Article 246** of the Constitution deals with the division of powers between the union and the states in terms of **List I** (Union List), **List II** (State List) and **List III** (Concurrent List).

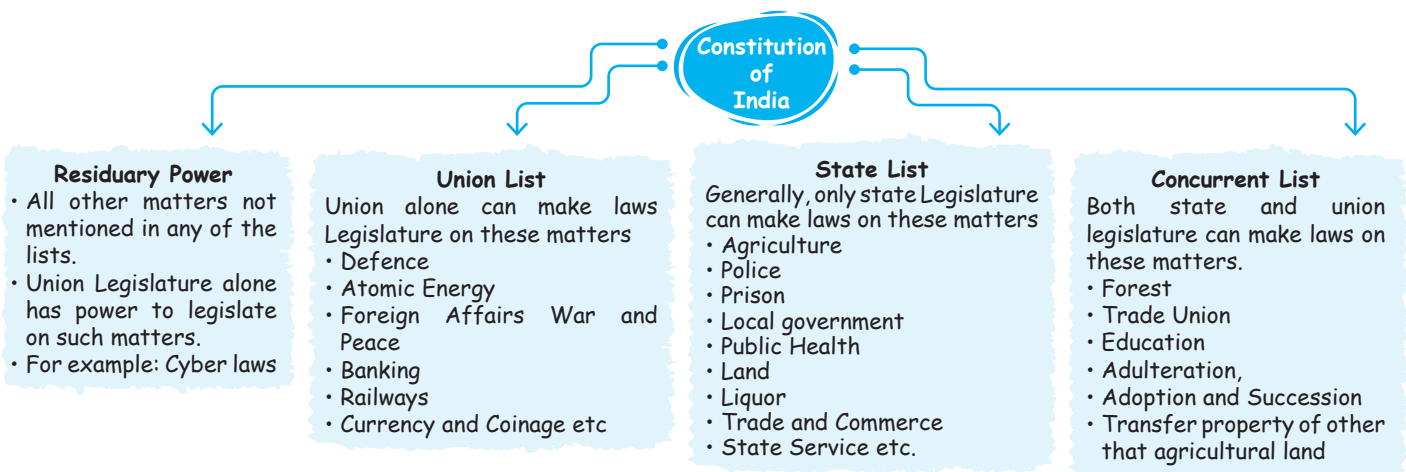

Constitution of India
Residuary Power
• All other matters not mentioned in any of the lists.
• Union Legislature alone has power to legislate on such matters.
• For example: Cyber laws
Union List
Union alone can make laws Legislature on these matters
• Defence
• Atomic Energy
• Foreign Affairs War and Peace
• Banking
• Railways
• Currency and Coinage etc
State List
Generally, only state Legislature can make laws on these matters
• Agriculture
• Police
• Prison
• Local government
• Public Health
• Land
• Liquor
• Trade and Commerce
• State Service etc.
Concurrent List
Both state and union legislature can make laws on these matters.
• Forest
• Trade Union
• Education
• Adulteration,
• Adoption and Succession
• Transfer property of other that agricultural land

Fig. 5.8: Distribution of Powers Between Government

Significance of the 7th Schedule

- **Division of Powers:** The 7th schedule of the Constitution provides a transparent allocation of powers between the central and state governments, mitigating potential conflicts and ensuring a well-defined distribution of authority.
- **Clarity in Responsibilities:** The categorization of subjects into three lists ensures that constituent units of the federation are aware of their distinct roles and responsibilities.
- **Maintenance of Harmony:** The explicit delineation of powers between the central and state governments prevents alterations to the Constitution's fundamentals, fostering peace and harmony between the two levels of governance.
- **Promotion of Unity and Integrity:** Post-partition, safeguarding national integration became paramount, necessitating a robust central government capable of protecting the nation against external threats.
- **Autonomy for States:** Legislative powers devolved to the states grant them autonomy within their specified spheres, fostering independence from the central government in their governance.

Need for Reforms

- **Redundant and old:** It has become redundant with time. The present Seventh Schedule and the three lists are inherited from 1935 legislation.
  - In 2002, the **National Commission to Review the Working of the Constitution** (Venkatachaliah Commission) said: "There is, however, no formal institutional structure that requires mandatory consultation between the Union and the states in the area of legislation under the concurrent list."
- **Delivery of Public goods:** Most public goods can be efficiently delivered at the local government level. But without delegation of funds, functions, and functionaries, presently left to the whims of state governments, local governments are unable to respond.
- **Increasing Centralization:** Items have moved from the state list to the concurrent list and from the concurrent list to the union list. Thus, amendments to the Seventh Schedule since 1950 have reinforced centralization and not neutralised that trend.
- **Empowering Local Bodies:** There should be a fourth list for local bodies other than the existing three lists. This reform might lead to the devolution of powers to local bodies and will help them in dealing with diverse matters of local importance.
- **Removal of the concurrent list:** The concurrent list creates a lot of confusion between the centre and state over the framing of legislation. Its removal from the Constitution will reduce the friction points between the Centre and the States.

RIGHTS AND LIABILITIES OF THE GOVERNMENT

Articles 294 to 300 in Part XII of the Constitution deal with the property, contracts, rights, liabilities, obligations, and suits of the Union and the states.

Property of the Union and the States

- **Succession:** All property and assets that were vested in the Dominion of India or a province or an Indian princely state before the commencement of the present Constitution became vested in the Union or the corresponding state. Similarly, all rights, liabilities, and obligations of the government of the dominion of India or a province or an Indian state would now be the rights, liabilities, and obligations of the Government of India or the corresponding state.
- **Escheat, Lapse, and Bona Vacantia:** Any property in India that would have accrued to the King of England or ruler of Indian state (princely) by **escheat (death of a person intestate without any heir), lapse (termination of rights through disuse or failure to follow appropriate procedures) or bona vacantia (property found without any power)** for want of a rightful owner, would now vest in the state if the property is situated there and in the Union, in any other case.
- **Sea-Wealth:** All lands, minerals, and other things of value under the ocean's waters within the territorial waters of India, the continental shelf of India, and the exclusive economic zone of India vests in the Union. Hence, a state near the ocean cannot claim jurisdiction over these things.
- **Compulsory Acquisition by Law:** The Parliament and the state legislatures are empowered to make laws for the compulsory acquisition and requisitioning of private property by the governments. Further, the **44th Amendment Act of 1978** has also abolished the Constitutional obligation to pay compensation in this regard except in two cases:
  - When the government acquires the property of a minority educational institution
  - When the government acquires the land held by a person under his personal cultivation and the land is within the statutory ceiling limits
- **Acquisition under Executive Power:** The Union or a stance can acquire, hold and dispose property under the exercise of its executive power. Further, the executive power of the Union or a state extends to the carrying of any trade or business within and in other states.

Suits by or Against the Government

- **Article 300** of the Constitution lays down that the Government of India may sue or be sued by the name of the **Union of India,** and the government of a state may sue or be sued by the **name of that state,** eg, State of

Bihar or State of Uttar Pradesh and so on. Thus, the Union of India and states are legal entities (juristic personalities) for purposes of suits and proceedings, not the Government of the Union or the government of states.

- **Extent of the Governmental Liability: Article 300** declares that the Union of India or states can sue or be sued in relation to their respective affairs as the domination of India and the corresponding provinces or Indian states might have sued or been sued before the Constitution.

  This provision is subject to any law made by Parliament or a state legislature. However, as of now, no such law has been passed. In the pre-Constitution period, the government was suable for contracts but not for torts (wrongs committed by its servants) regarding its sovereign functions.

  - **Liability for Contracts:** Under the exercise of its executive power, the Union or a state can enter into contracts for the acquisition, holding and disposal of property, or to carry on any trade or business, or for any other purpose.
  - The President or the Governor is not personally liable in respect of any contract executed in his name. Similarly, the officer executing the contract is also not personally liable. But, the Constitution lays down three mandatory conditions to be fulfilled by such contracts:
    - They must be expressed to be made by the **President/Governor,** as the case may be;
    - They must be executed on behalf of the President or Governor, as the case may be; and
    - They must be executed by such person or in such manner as the President/Governor may direct or authorise.
  - **Liability for Torts:** The Government (Union or states) in India can be sued for torts (civil wrongs) committed by its officials only in the exercise of its non-sovereign functions but not in the sovereign functions like administering justice, commandeering goods during war, constructing a military road, etc.
    - This distinction between the sovereign and non-sovereign functions of the Government in India and the immunity of the government in respect of its sovereign functions was established in the famous PO **Steam Navigation Company case (1861).** This was reaffirmed by the Supreme Court in the **Kasturi Lal case (1965).**
    - **In the Nagendra Rao Case (1994),** the Supreme Court of India ruled that when a citizen suffers any damage due to the negligent act of the servants of the State, the State would be liable to pay compensation for it, and the State cannot avoid this liability on the ground of sovereign immunity.
    - **In The Common Cause Case (1999),** the Supreme Court of India, again examined the whole doctrine and rejected the sovereign immunity.

Suits Against Public Officials

- **President and Governor**

Table 5.6: Suit Against Public Officials

Official Acts(Article 361)	Personal Acts
❑ The President and the Governors cannot be sued during the term of their office or thereafter, for any act done by them in the exercise and performance of their official powers and duties. ❑ The official conduct of the President can be reviewed by a court, tribunal or any other body authorised by either House of Parliament to investigate charges for impeachment. ❑ The aggrieved person can bring appropriate proceedings against the Union of India instead of the President and the state instead of the Governor of that state.	❑ Criminal proceedings cannot be initiated against the President and the Governors for their personal actions, and they cannot be arrested or imprisoned. ❑ However, this immunity applies only during the tenure of their office. ❑ Nonetheless, Civil proceedings can be initiated against them for personal actions during their term, provided a **two-month advance notice** is given.

- **Ministers:** The **Constitution does not grant any immunity to the ministers** for their official acts. But, since they are not required to countersign the official acts of the President and the Governors, they are not liable in the courts for those acts. However, the ministers do not enjoy any kind of immunity for their personal acts, and can be sued for crimes as well as torts committed by them in the ordinary courts like common citizens.
- **Judicial Officers:** They **enjoy immunity** from any liability in respect of their official acts and hence, cannot be sued. The **Judicial Officers Protection Act (1850)** stipulates that "*no judge, magistrate, justice of peace, collector, or other person acting judicially shall be susceptible to be sued in any civil court for any act performed by him in the discharge of his official duty*."
- **Civil Servants:** The civil servant who made a contract in his official capacity is not **personally liable** in respect

of that contract, but it is the government (Central or state) that is liable for the contract. But, if the contract is made without complying with the conditions specified in the Constitution, then the civil servant who made the contract is personally liable.

- They also **enjoy immunity from legal liability** for their tortious acts in respect of the sovereign functions of the government. In other cases, the liability of the civil servants for torts or illegal acts is the same as of any ordinary citizen.
- Civil proceedings can be instituted against them for anything done in their official capacity after giving a two-month advance notice.
- But, no such notice is required when the action is to be brought against them for the acts done outside the scope of their official duties.
- Criminal proceedings can be instituted against the civil servants for acts done in their official capacity, with the prior permission of the President or the Governor, where necessary.

Table- 5.7: Articles Related to Rights and Liabilities of the Government

Article	Subject-Matter
294	Succession to property, assets, rights, liabilities and obligations in certain cases
295	Succession to property, assets, rights, liabilities and obligations in other cases
296	Property accruing by escheat or lapse or as bona vacantia
297	Things of value within territorial waters or continental shelf and resources of the exclusive economic zone to vest in the Union
298.	Power to carry on trade, etc.
299	Contracts
300	Suits and proceedings
361	Protection (immunities) of President and Governors

CONCLUSION

India adheres to the time-tested Parliamentary System inherited from the British era, advocating reforms to iron out the issues rather than a new system. In order to deepen the tenets of democracy, it is imperative to continuously strive to identify and adequately address issues of friction either between different levels of government or between the various government organs.

Union and Its Territory

6

INTRODUCTION

India is referred to as a **"Union of States"** in its constitution. The country is a federal union consisting of 28 states and 8 union territories. It is important to note that the Indian states do not have individual sovereignty, citizenship, or constitution.

Articles 1 to 4 under Part-1 of the constitution deals with the Union and its Territory.

Article-1	Name and territory of the Union
Article-2	Admission or establishment new states
Article-3	Formation of new States and alteration boundaries or names of existing, States
Article-4	Laws made under articles 2 and 3 to provide for the amendment of the First and the Fourth Schedules and supplemental, incidental and consequential matters.

Fig. 6.1

ARTICLE 1: A UNION OF STATES

Article 1 of the Indian Constitution defines **India, also known as Bharat**, as a **'Union of States'.** This article **addresses two fundamental aspects**:

1. The name of the country
2. The nature of its political structure.

In the **Constituent Assembly, the choice of the country's name was a matter of debate**. Some members advocated for the traditional name, Bharat, while others favored the modern name, India. Consequently, a compromise was reached, and the **Constitution acknowledges both names as 'India, that is, Bharat.'**

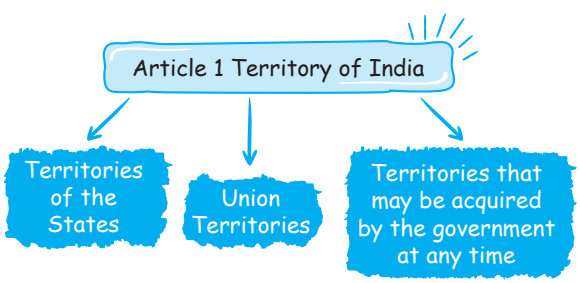

Article 1 Territory of India
Territories of the States
Union Territories
Territories that may be acquired by the government at any time

Fig. 6.2: Article 1 Territory of India

Additionally, India is described as a 'Union' despite having a federal structure. According to Dr. B.R. Ambedkar, the phrase 'Union of States' has been preferred to 'Federation of States' for two reasons:

(a) The Indian Federation is not the outcome of a contractual agreement among the states, as seen in the American Federation.

(b) The states in India do not possess the right to secede from the union.

This 'Union of States' is considered indivisible, and the division into states is primarily for administrative convenience.

Article 1: Categorizes The Territory of India Into Three Parts

Article 1 of the Indian Constitution classifies the territory of India into three categories: (1) Territories of the states, comprising areas allocated to individual states within the federal system; (2) Union territories, directly administered by the Central government to ensure uniform governance and national integration; and (3) Territories that may be acquired by the Government of India at any time, allowing for potential expansion of the country's boundaries. This classification reflects India's federal structure, where states hold significant administrative authority, while union territories are governed more centrally to maintain national cohesion and efficient administration.

Special Provisions outlined in Part XXI are applicable to the States of Maharashtra, Gujarat, Nagaland, Assam, Manipur, Andhra Pradesh, Telangana, Sikkim, Mizoram, Arunachal Pradesh, Goa, and Karnataka.

These unique provisions cater to the distinctive needs of these states.Furthermore, it is important to note that the Fifth and Sixth Schedules contain distinct provisions governing the administration of scheduled areas and tribal areas within the states

States are integral members of the federal system and share powers with the central government. In contrast, union territories and acquired territories are under the direct administration of the Central government.

As a sovereign state, India has acquired various foreign territories such as Dadra and Nagar Haveli, Goa, Daman and Diu, Puducherry, and Sikkim since the commencement of the Constitution.

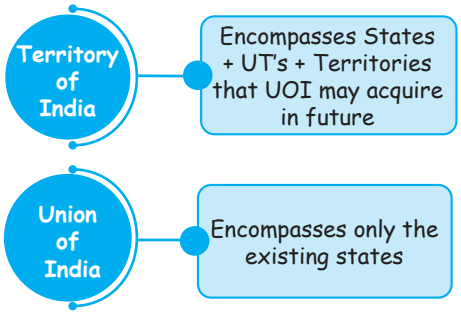

Territory of India
Encompasses States + UT's + Territories that UOI may acquire in future
Union of India
Encompasses only the existing states

Fig. 6.3

Territorial Waters

The limit of the territorial waters is now defined as the line, every point of which is twelve nautical miles away from the closest point of the applicable **base line,** as per **Section 3(2)** of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976. The "Exclusive Economic Zone" of India has been expanded by the government by another announcement dated January 15, 1977, to a maximum of 200 nautical miles beyond the coastal baseline. This has been carried out in accordance with the 1976 Constitution (40th Amendment) Act and the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act.

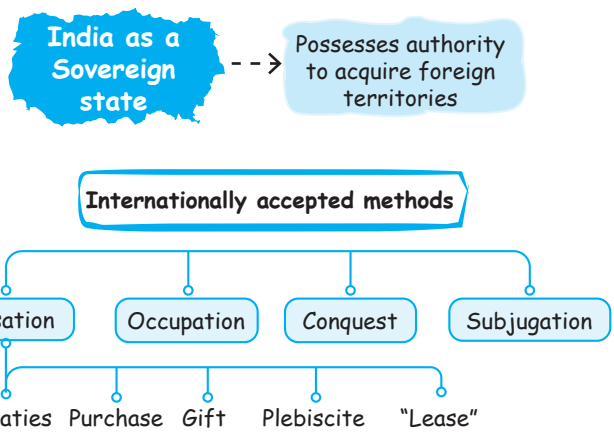


Fig. 6.4: Internationally accepted methods

ARTICLE 2: ADMISSION OR ESTABLISHMENT OF NEW STATES

Article 2 grants authority to the Parliament to 'admit into the Union of India or establish new states under terms and conditions it deems appropriate.' Therefore, **Article 2 confers two distinct powers to the Parliament:**

(a) The power to admit new states into the Union of India, which pertains to states already in existence

(b) The power to establish entirely new states that did not exist before.

ARTICLE 3: FORMATION OF NEW STATES AND ALTERATION OF AREAS, BOUNDARIES OR NAMES OF EXISTING STATES

Parliament, according to Article 3 of the Indian Constitution, holds the authority to enact laws for various purposes related to the territory of states. It can form a new state by separating territory from an existing state, uniting two or more states or parts of states, or uniting any territory to a part of any state. Additionally, Parliament has the power to increase or diminish the area of any state, alter the boundaries of any state, or change the name of any state. Article 3 Imposes Two Essential Conditions To Be Fulfilled for Its Implementation

1. A bill proposing the aforementioned changes can only be introduced in Parliament with the **prior recommendation of the President**.
2. Before offering this recommendation, the President must refer the bill to the concerned **state legislature,** seeking their views within a specified time-frame.

Furthermore, Parliament's authority to establish new states also extends to the creation of a new state or union territory by amalgamating a portion of any state or union territory with another state or union territory.

Note: It is crucial to note that the President or Parliament is not bound by the views expressed by the state legislature and may either accept or reject them, even if these views are conveyed in a timely manner. Additionally, there is no necessity to re-consult the state legislature every time an amendment to the bill is proposed and approved in Parliament. In the case of a union territory, no reference needs to be made to the concerned legislature to ascertain their views, and Parliament can take appropriate action as it deems fit.

Table 6.1: Comparison of Article 2 and 3

Article 2	Article 3
It pertains to the admission or creation of new states that are not currently part of the Union of India.	It deals with the formation of new states or alterations to the existing states within the Union of India

ARTICLE 4 OF THE INDIAN CONSTITUTION

Article 4 stipulates that **laws enacted** for the admission or establishment of new states **(under Article 2)** and the formation of new states, as well as changes in the areas, boundaries, or names of existing states **(under Article 3),** are

not considered as amendments to the Constitution under **Article 368.** As a result, these laws can be passed by a simple majority through the ordinary legislative process.

EXCHANGE OF TERRITORIES

Regarding the power of Parliament to reduce the areas of a state (under Article 3), a question arose as to whether it also encompasses the authority to cede Indian territory to a foreign country. This matter was examined by the Supreme Court in 1960 following a reference made by the President. The issue stemmed from the Central Government's decision to cede a portion of territory known as **Berubari Union** in West Bengal to Pakistan, which triggered political agitation and controversy.

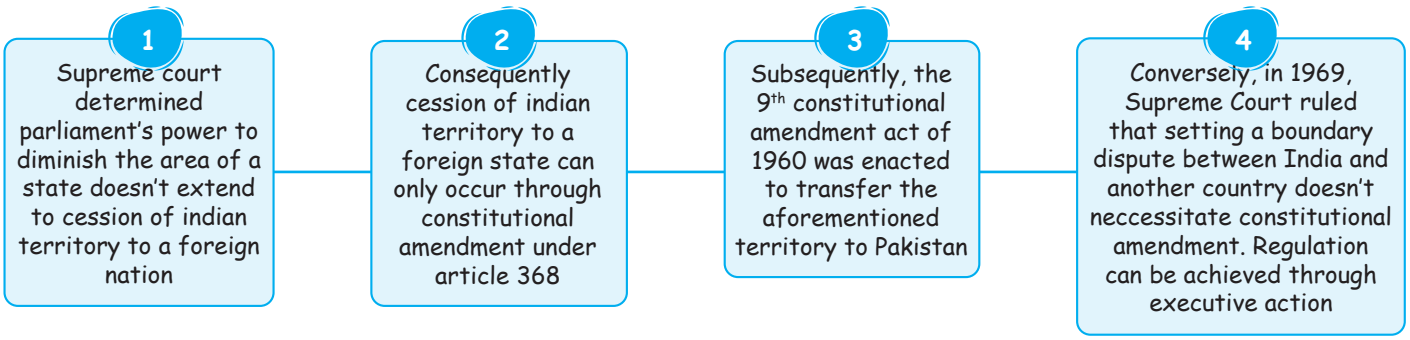

1
Supreme court determined parliament's power to diminish the area of a state doesn't extend to cession of indian territory to a foreign nation
2
Consequently cession of indian territory to a foreign state can only occur through constitutional amendment under article 368
3
Subsequently, the 9th constitutional amendment act of 1960 was enacted to transfer the aforementioned territory to Pakistan
4
Conversely, in 1969, Supreme Court ruled that setting a boundary dispute between India and another country doesn't neccessitate constitutional amendment. Regulation can be achieved through executive action

Fig. 6.6: Supreme Court on Exchange of Territories

Exchange of Territories with Bangladesh

- At the time of India's independence, **Sir Cyril Radcliffe Commission** demarcated the boundary between India and Pakistan as well as India and East Pakistan (now Bangladesh).
- While dividing the territory in East Pakistan, Radcliffe did not pay attention to small patches of land called 'enclaves'.
- These enclaves were, in the pre-independence era, called **Chitmahals** and they were used by the Raja of Cooch Behar and Maharaja of Rangpur as stakes in the game of chess.
- Later several agreements such as the Nehru-Noon Agreement of 1958 tried to resolve the issue of enclaves.
- Finally, after Bangladesh's independence from Pakistan in 1971, India and Bangladesh signed the 1974 Land Boundary Agreement ("1974 LBA"), to resolve outstanding issues.
- This agreement was formally ratified by India in 2015 by passing the 100th Constitutional Amendment Act of 2015.
- Under this agreement, India relinquished control over 111 enclaves to Bangladesh, while Bangladesh reciprocated by ceding 51 enclaves to India.

Additionally, the agreement encompassed the transfer of areas held adversely by both countries and the demarcation of a 6.1 km section of an un-demarcated border. To facilitate these three objectives, the amendment made alterations to the provisions concerning the territories of four states - Assam, West Bengal, Meghalaya, and Tripura - as specified in the First Schedule of the Constitution.

EVOLUTION OF STATES AND UNION TERRITORIES

Integration of Princely States

At the time of India's independence, the country was composed of two distinct types of political entities: the British provinces, which were under direct British rule, and the princely states, which were governed by native rulers but were subject to the overarching authority of the British Crown.

The **Indian Independence Act of 1947** marked the creation of two independent and separate dominions, India and Pakistan, while also providing three choices to the princely states:

a. To join India,
b. To join Pakistan
c. To retain their independence.

Out of the 552 princely states, 549 opted to join India, while the remaining three states, namely Hyderabad, Junagarh, and Kashmir, initially chose not to join India.

However, in due course, they were integrated with India through distinct means–

In 1950, India's Constitution categorized the states and territories of the Indian Union into four distinct groups: **Part A, Part B, Part C states, and Part D territories.** These totaled 29 entities in all.

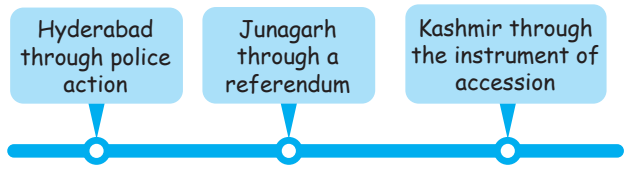


Fig. 6.9: Mode of Accession

Dhar Commission

The integration of princely states into the broader Indian framework was primarily an ad-hoc arrangement. Over time, there emerged a significant demand for the reorganization of states along linguistic lines, with notable emphasis coming from regions, particularly South India. Consequently, in June 1948, the Indian government established the Linguistic Provinces Commission, chaired by S.K. Dhar, to assess the feasibility of this reorganization.

The commission presented its findings in December 1948, and recommended the restructuring of states based on considerations of administrative convenience rather than linguistic factors. This recommendation generated substantial discontent, leading to the appointment of another Linguistic Provinces Committee by the Congress Party in December 1948, which was comprised of Jawaharlal Nehru, Sardar Vallabhbhai Patel, and Pattabhi Sitaramayya, and thus informally known as the JVP Committee.

JVP Committee

The JVP Committee presented its report in April 1949 and officially rejected the idea of using language as the basis for state reorganization. Nevertheless, in October 1953, due to prolonged public protests and the tragic death of Potti Sriramulu, a prominent Congress figure, following a 56-day hunger strike for this cause, the Government of India was compelled to create the first linguistic state, known as **Andhra State,** by separating the Telugu-speaking regions from the Madras state.

Fazl Ali Commission

The establishment of the Andhra state heightened the demand from other regions for the formation of states based on linguistic considerations. In response, the Indian government appointed a three-member States Reorganisation Commission in December 1953, with Fazl Ali as its chairman and K.M. Panikkar and H.N. Kunzru as the other two members. This commission presented its findings in September 1955, acknowledging language as a fundamental factor in state reorganization. However, it rejected the notion of 'one language, one state,' emphasizing that the unity and security of India should be the primary concern in reconfiguring the country's political divisions.

Safeguarding and enhancing the unity security of the Nation
Linguistic and cultural cohesion
Fazl Ali Commission Commit four key factors in Key state reorganisation plan
Planning and promoting the welfare of the people in each stark & the nation sawale.
Financial, economic and administrative factors

Fig. 6.10: Fazal Ali Commission on State Reorganisation

Recommendations of Fazal Ali Commission

1. The elimination of the original Constitution's four-fold classification of states and territories,
2. Advocated the creation of **sixteen states** and **three centrally administered territories**.

Table 6.2: Committees on State Reorganisation

Year	Commission	Formed by	Members	Recommendation
1948 (June)	Linguistic Provinces Commission	Government of India	Chaired by S.K. Dhar	Restructuring of states based on considerations of administrative convenience rather than linguistic factors
1948 (December)	Linguistic Provinces Committee (JVP committee)	Congress Party	Jawaharlal Nehru, Sardar Vallabhbhai Patel, and Pattabhi Sitaramayya	Rejected the idea of using language as the basis for state reorganization
1953	State Reorganisation Commission	Government of India	Fazl Ali as its chairman and K.M. Panikkar and H.N. Kunzru as the other two members	Acknowledged **language as a fundamental factor** in state reorganization. However, it rejected the notion of 'one language, one state,'

State Reorganisation Act of 1956

The Government of India accepted the recommendations of the **Fazl Ali Commission** with minor adjustments. Through the States Reorganisation Act of 1956 and the **7th Constitutional Amendment Act of 1956**, the distinction between Part A and Part B states was abolished, and Part C states were dissolved. Some of them were amalgamated with neighboring states, while others were designated as union territories.

Consequently, on November 1, 1956, 14 states and six union territories were formed.

- **Formation New States:** The act led to the creation of new states and the Reorganisation of existing ones based on the predominant language spoken by the population.
  - It created 14 states and 6 union territories on November 1, 1956, replacing the previous classification of states (Part A, B, C, and D) with the 7th Constitutional Amendment Act of 1956.
- **Preservation of Existing States:** States that had a common linguistic identity were often retained, but they were sometimes adjusted in terms of boundaries to align with linguistic considerations.
  - Example: The State of Kerala was carved out of the former Part B State of Travancore-Cochin with new territories acquired from the State of Madras
- **Bilingual States:** In some cases, states were declared as bilingual, recognizing that multiple languages might be spoken in a region.
  - Example: It merged the Saurashtra state and Kutch state (Gujarati speaking) into that of Bombay (Marathi speaking) and created a bilingual state of Bombay.
- **Promoted the Linguistic and Cultural Identity:** This Reorganisation was a significant step in India's post-independence history, as it recognized the importance of linguistic and cultural identity in governance and administration.
  - Example: It created the new union territory of Laccadive, Minicoy and Amindivi Islands from the territory detached from the Madras to preserve its cultural distinctiveness.

NEW STATES AND UNION TERRITORIES ESTABLISHED POST-1956

Following the extensive reorganization of states in 1956, India's political landscape continued to evolve due to popular movements and changing political circumstances. The demand for new states based on linguistic or cultural commonality led to the division of existing states.

- **1960:** In 1960, the bilingual state of Bombay was split into two separate states – Maharashtra for Marathi speakers and Gujarat for Gujarati speakers. Gujarat became the 15th state in the Indian Union.
- **1961:** The 10th Constitutional Amendment Act of 1961 transformed Dadra and Nagar Haveli into a union territory of India. In 2020, it was merged with the union territory of Daman and Diu to create the new union territory of Dadra and Nagar Haveli and Daman and Diu, facilitated by the Dadra and Nagar Haveli and Daman and Diu (Merger of Union Territories) Act, 2019.
- **1962:** Goa and Daman & Diu were acquired from the Portuguese through a police action in 1961. Initially they were designated as union territory by the 12th Constitutional Amendment Act of 1962. In 1987, Goa was granted statehood, and Daman and Diu became a separate union territory.
- **1962:** Puducherry includes the former French establishments known as Puducherry, Karaikal, Mahe, and Yanam. The French transferred this region to India in 1954. It was administered as an 'acquired territory' until 1962 when it was designated a union territory by the 14th Constitutional Amendment Act.
- **1963:** In 1963, the state of Nagaland was created by separating the Naga Hills and Tuensang area from Assam to address the demands of the Naga movement. Before obtaining the status of the 16th state in the Indian Union, Nagaland was placed under the control of the governor of Assam in 1961.
- **1966:** In 1966, the state of Punjab was divided to create Haryana, the 17th state, and the union territory of Chandigarh. This division was a response to the demand for a separate 'Sikh Homeland' (Punjabi Subha). The Punjabi-speaking areas became the state of Punjab, the Hindi-speaking areas formed Haryana and the hill areas merged with the adjacent union territory of Himachal Pradesh. In 1971, the union territory of Himachal Pradesh attained the status of a state, becoming the 18th state in the Indian Union.
- **1972:** In 1972, a significant reorganization of the political map of North-East India was carried out. This resulted in Manipur and Tripura transitioning from union territories to states and Meghalaya gaining statehood. Additionally, the union territories of Mizoram and Arunachal Pradesh were formed out of the territories of Assam.
- **1974:** Until 1947, Sikkim was a princely state in India ruled by a Chogyal. In 1974, Sikkim expressed its desire for closer association with India, leading to the enactment of the 35th Constitutional Amendment Act of 1974. This amendment conferred on Sikkim the status of an 'associate state' of the Indian Union.
- However, in a 1975 referendum, the people of Sikkim voted to abolish the institution of Chogyal and integrate Sikkim into India, resulting in the 36th Constitutional Amendment Act of 1975. This made Sikkim the 22nd state and amended the First and Fourth Schedules of the Constitution while introducing a new Article 371-F for special provisions related to Sikkim's administration.
- **1987:** In 1987, three new states, Mizoram, Arunachal Pradesh, and Goa, were established as the 23rd, 24th, and 25th states of the Indian Union, respectively. Mizoram,

which was initially a union territory, was granted full statehood following the Mizoram Peace Accord of 1986. The state of Goa was created by separating it from the Union Territory of Goa, Daman and Diu.

- **2000:** In 2000, three additional states, Chhattisgarh, Uttarakhand, and Jharkhand, were carved out of the territories of Madhya Pradesh, Uttar Pradesh, and Bihar, respectively. These became the 26th, 27th, and 28th states of the Indian Union.
- **2014:** In 2014, the state of Telangana came into existence as the 29th state, emerging from the territories of Andhra Pradesh. The Andhra State Act of 1953 established the first linguistic state of India by segregating Telugu-speaking areas from the State of Madras.
- The States Reorganization Act of 1956 merged the Telugu-speaking areas of Hyderabad state with the Andhra state to create an enlarged Andhra Pradesh. The Andhra Pradesh Reorganisation Act of 2014 separated Andhra Pradesh into two separate states, Andhra Pradesh (residuary), and Telangana.
- **2019:** Until 2019, the former state of Jammu and Kashmir had its own constitution and enjoyed special status under Article 370 of the Indian Constitution. In 2019, this special status was made inoperative through a presidential order, known as "**The Constitution (Application to Jammu and Kashmir) Order, 2019**," which extended all provisions of the Indian Constitution to Jammu and Kashmir.
- However, Article 370 remains in the Constitution, although inoperative. **The Jammu and Kashmir Reorganisation Act of 2019** divided the erstwhile state into two separate union territories: Jammu & Kashmir and Ladakh. The union territory of Jammu and Kashmir includes all districts of the former state except "Kargil and Leh districts", which became part of the union territory of Ladakh.

CHANGE OF NAMES OF STATES AND UNION TERRITORIES

Several States and Union territories have undergone name changes over the years. The United Provinces was renamed Uttar Pradesh' in 1950. Madras became 'Tamil Nadu' in 1969. In 1973, Mysore was renamed as 'Karnataka,' and Laccadive, Minicoy, and Amindivi Islands were renamed as 'Lakshadweep.' In 1992, the Union Territory of Delhi was redesignated as the National Capital Territory of Delhi through the 69th Constitutional Amendment Act of 1991, without being granted full statehood. In 2006, Uttaranchal was renamed as 'Uttarakhand,' and Pondicherry became 'Puducherry.' In 2011, Orissa was renamed 'Odisha.'

These name changes were carried out under Article 3 of the Constitution by the Parliament.

Table 6.3: Laws made by Parliament under Article 3

Serial Number	Acts	Features
1	Assam (Alteration of Boundaries) Act, 1951	Altered the boundaries of the State of Assam by ceding a strip of territory comprising that State to Bhutan.
2	Andhra State Act, 1953	Formed the first linguistic state, known as the State of Andhra, by taking out the Telugu speaking areas from the State of Madras. Kurnool was the capital of Andhra State and the state high court was established at Guntur.
3	Himachal Pradesh and Bilaspur (New State) Act, 1954	Formed the new state of Himachal Pradesh by uniting the existing States of Himachal Pradesh and Bilaspur.
4	States Reorganisation Act, 1956	Made the extensive changes in the boundaries of various states for the purpose of meeting the linguistic, regional and local demands.
5	Andhra Pradesh and Madras (Alteration of Boundaries) Act,1959	Provided for the alteration of boundaries of the States of Andhra Pradesh and Madras
6	Bombay Reorganisation Act,1960	Formed the new State of Gujarat (15th state) by taking out the Gujarati speaking areas from the state of Bombay and renamed the other part of the Bombay State as Maharashtra State. The city of Ahmedabad was made the capital of Gujarat.
7	Acquired Territories (Merger) Act, 1960	Provided for the merger into the States of Assam, Punjab and West Bengal of Certain territories acquired from Pakistan under the agreements entered into between the Governments of India and Pakistan, in 1958 and 1959.
8	State of Nagaland Act, 1962	Formed the new State of Nagaland (16th state) by taking out the State of Nagaland Act, 1962 the Naga Hills - Tuensang Area from the State of Assam.The Naga Hills - Tuensang Area was a tribal area of Assam specified in the Sixth Schedule of the Constitution.

9	Punjab Reorganisation Act, 1966	Formed the new State of Haryana (17th state) by taking outPunjab Reorganisation Act, 1966 the Hindi speaking areas from the State of Punjab. It also made Chandigarh a new Union Territory as well as a common capital for both Punjab and Haryana.
10	Bihar and Uttar Pradesh (Alteration of Bihar and Uttar Pradesh. Boundaries) Act, 1968	—
11	Andhra Pradesh and Mysore (Transfer of Territory) Act, 1968	—
12	Assam Reorganisation (Meghalaya) Act, 1969	Formed an autonomous state (sub-state) known as Meghalaya, within the State of Assam
13	North-Eastern Areas (Reorganization) Act, 1971	Elevated the two Union Territories of Manipur and Tripura to the status of states (19th state and 20th state respectively). It also conferred full statehood on Meghalaya (21st state), which was previously a sub-state within the State of Assam. Further, it formed the two Union Territories of Mizoram and Arunachal Pradesh out of the territories of Assam
14	Mysore State (Alteration of Name) Act 1973	—
15	Laccadive, Minicoy and Amindivi Islands (Alteration of Name) Act, 1973	—
16	Haryana and Uttar Pradesh (Alteration of Boundaries) Act, 1979	—
17	State of Mizoram Act, 1986 State of Arunachal Pradesh Act,1986	Elevated the Union Territory of Mizoram to the status of a state (23rd state) Elevated the Union Territory of Arunachal Pradesh to the status of a State (24th state).
18	Goa, Daman and Diu Reorganisation Act, 1987	—
19	Madhya Pradesh Reorganisation Act, 2000	—
20	Uttar Pradesh Reorganisation Act, 2000 Bihar Reorganisation Act, 2000	Created the new State of Uttaranchal (27th state) by carving out its territory from that of the territories of the state of Uttar Pradesh. Established the new State of Jharkhand (28th state) by separating its territory from the territories of the State of Bihar
21	Uttaranchal (Alteration of Name) Act, 2006 Pondicherry (Alteration of Name) Act, 2006	Changed the name of the State of Uttaranchal to that of the State of Uttarakhand
22	Orissa (Alteration of Name) Act, 2011	—
23	Andhra Pradesh Reorganisation Act, 2014	Formed the new state of Telangana (29th state) by carving out its territory from the territories of the state of Andhra Pradesh.
24	Jammu and Kashmir Reorganisation Act, 2019	Bifurcated the erstwhile state of Jammu and Kashmir into two separate Union territories, namely, the Union territory of Jammu and Kashmir and the Union territory of Ladakh.

25	Dadra and Nagar Haveli and Daman and Diu (Merger of Union Territories) Act, 2019	Merged the erstwhile two separate union territories (The union territory of Dadra and Nagar Haveli and the union territory of Daman and Diu) in order to form a new union territory of Dadra and Nagar Haveli and Daman and Diu.

UNION TERRITORIES

According to **Article 1 of the Constitution**, India is made up of **three types of territories**:

(a) The territories of the states,

(b) Union territories

(c) Territories that the Government of India might acquire in the future.

Currently, there are twenty-eight states, eight union territories. The states are part of the federal system in India and share power with the central government. On the other hand, union territories are areas directly controlled and managed by the central government. That's why they are also called 'centrally administered territories.'

This **arrangement** is a significant departure from federalism in India because, in the case of Union Territories, the Parliament is empowered to legislate even on those subjects which fall under the State list of the **Seventh Schedule** of the Constitution.

Establishment of Union Territories

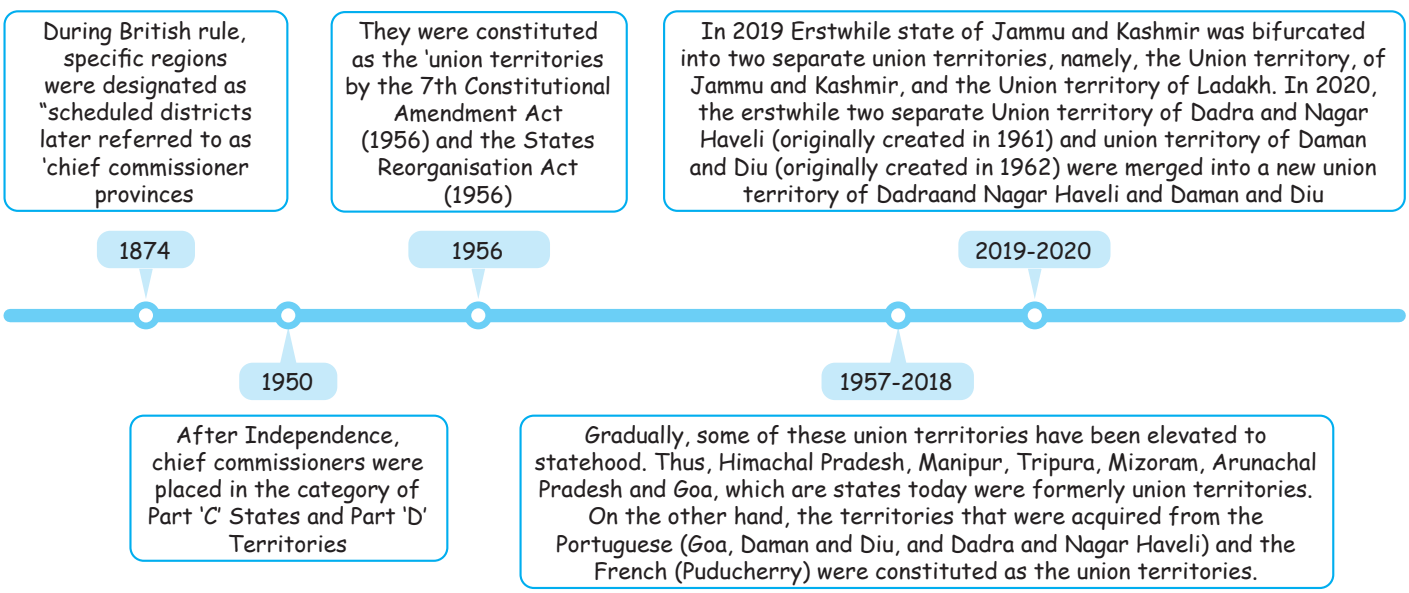

During British rule, specific regions were designated as "scheduled districts later referred to as 'chief commissioner provinces
1874
1950
After Independence, chief commissioners were placed in the category of Part 'C' States and Part 'D' Territories
They were constituted as the 'union territories by the 7th Constitutional Amendment Act (1956) and the States Reorganisation Act (1956)
1956
1957-2018
Gradually, some of these union territories have been elevated to statehood. Thus, Himachal Pradesh, Manipur, Tripura, Mizoram, Arunachal Pradesh and Goa, which are states today were formerly union territories. On the other hand, the territories that were acquired from the Portuguese (Goa, Daman and Diu, and Dadra and Nagar Haveli) and the French (Puducherry) were constituted as the union territories.
In 2019 Erstwhile state of Jammu and Kashmir was bifurcated into two separate union territories, namely, the Union territory, of Jammu and Kashmir, and the Union territory of Ladakh. In 2020, the erstwhile two separate Union territory of Dadra and Nagar Haveli (originally created in 1961) and union territory of Daman and Diu (originally created in 1962) were merged into a new union territory of Dadraand Nagar Haveli and Daman and Diu
2019-2020

Fig. 6.12: Establishment of Union Territories

Currently, there are eight Union Territories in India. They are Andaman and Nicobar Islands (created in 1956), Delhi (created in 1956), Lakshadweep (created in 1956), Puducherry (created in 1962), Chandigarh (created in 1966), Jammu and Kashmir (created in 2019), Ladakh (created in 2019), Dadra and Nagar Haveli and Daman and Diu (merged into one in 2020)

Before 1973, Lakshadweep was known as Laccadive, Minicoy, and Amindivi Islands. In **1992, Delhi was renamed as the National Capital Territory of Delhi**, and **until 2006, Puducherry was referred to as Pondicherry.**

These **Union Territories were established for various reasons**:

- **Political and administrative considerations**, such as Delhi and Chandigarh.
- **Preserving cultural distinctiveness**, as seen in Puducherry and Dadra and Nagar Haveli and Daman and Diu.
- **Recognizing their strategic importance**, as in the case of Andaman and Nicobar Islands and Lakshadweep.
- **Providing special attention to the welfare of backward and tribal communities**, which later became states, including Mizoram, Manipur, Tripura, and Arunachal Pradesh.

Jammu and Kashmir Reorganisation

In **2019,** the **state** of Jammu and Kashmir was split into two new areas called Union territories. One is called the Union territory of Jammu and Kashmir, and the other is the Union territory of Ladakh. The government explained why they did this when they introduced the Jammu and Kashmir Reorganisation Bill in Parliament:

- **Ladakh** is a large but sparsely populated area with difficult terrain. It is a region administered by India as a union territory and constitutes an eastern portion of the larger Kashmir region. It does not have its own legislature.

- Due to **security concerns, like terrorism from across the border**, a separate Union territory was created for Jammu and Kashmir. Jammu and Kashmir will have its own legislature.

Merger of Dadra and Nagar Haveli, and Daman and Diu

In 2020, the government combined two places, Dadra and Nagar Haveli, and Daman and Diu, into one area called Dadra and Nagar Haveli and Daman and Diu.

Reason for Merger

They did this because these places are similar in many ways.

- They share the same administrative setup, history, language, and culture.
- The people who run the government departments in these areas, like the police and forest officials, are the same.
- Also, many policies and development plans, such as those for tourism, industries, education, and information technology, are alike.
- Having two different government entities in both areas was causing problems like duplication, inefficiency, and wasted money.
- It was also hard for the government to manage its employees and their careers.

Governance of Union Territories

Provisions with respect to the administration of The Union Territories are described under **Part VIII of the Constitution from Article 239 to 242**. Even though all union territories fall into the same category, their administrative systems are not the same.

The President can also appoint the Governor of a state as the administrator of an adjacent union territory. In this role, the Governor acts independently of their council of ministers.

Each union territory is managed by the President through an administrator appointed by them. Unlike a governor who is the head of state, an administrator is an agent of the President.

The President can decide the title of an administrator, such as Lieutenant Governor, Chief Commissioner, or Administrator.

Currently,

- **Lieutenant Governor** for Delhi, Puducherry, Andaman and Nicobar Islands, Jammu and Kashmir, and Ladakh.
- Chandigarh, Dadra and Nagar Haveli, Daman and Diu, and Lakshadweep have **Administrators.**

Puducherry got its legislative assembly in 1963, Delhi in 1992, and Jammu and Kashmir in 2019. They have a Council of Ministers led by a Chief Minister. The other Five union territories don not have these political setups. However, even if these institutions are established, the President and Parliament still have the highest control over them.

The Parliament can make laws on any topic for the union territories, including those in the State List. This power extends to Puducherry, Delhi, and Jammu and Kashmir, despite them having their own legislatures.

Parliament's legislative power for the union territories on State List subjects remains unchanged, even if they have a local legislature.

However, the legislative assembly of Puducherry can make laws on State List and Concurrent List subjects. Similarly, Delhi's legislative assembly can make laws on State List topics (except public order, police, and land) and Concurrent List. The legislative assembly of Jammu and Kashmir can make laws on State List matters (except public order and police) and Concurrent List.

The **President** has the authority to **create rules** for the peace, progress, and good governance of certain areas like the Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli, Daman and Diu, and Ladakh. In Puducherry, the President can make rules only when the assembly is not functioning. These rules have the same power as laws passed by Parliament and can even replace or change any law passed by Parliament for these places.

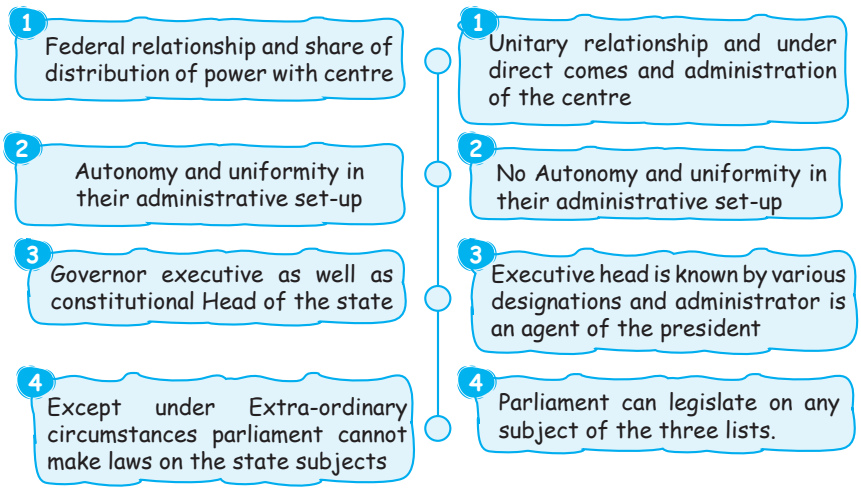

1
Federal relationship and share of distribution of power with centre
2
Autonomy and uniformity in their administrative set-up
3
Governor executive as well as constitutional Head of the state
4
Except under Extra-ordinary circumstances parliament cannot make laws on the state subjects
1
Unitary relationship and under direct comes and administration of the centre
2
No Autonomy and uniformity in their administrative set-up
3
Executive head is known by various designations and administrator is an agent of the president
4
Parliament can legislate on any subject of the three lists.

Fig. 6.13: Features of Union Territories

While the Constitution doesn't specifically address the administration of acquired territories, the constitutional provisions for union territories also apply to acquired territories.

The Parliament can set up a High Court for a territory or assign it to the High Court of a nearby state.

- Delhi is the only Union territory with its own high court since 1966.
- The Bombay High Court covers Dadra and Nagar Haveli, Daman and Diu,
- Andaman and Nicobar Islands comes under jurisdiction of Calcutta High court
- Chandigarh come under the jurisdiction of Punjab and Haryana High Court
- Lakshadweep come under the jurisdiction Kerala High Court
- Puducherry come under the jurisdiction Madras High Court
- Jammu and Kashmir and Ladakh share a common high court Jammu and Kashmir & Ladakh High Cou**rt**

Delhi: Case Sui Generis (Article 239AA and 239AB)

In 1991, the 69th Constitutional Amendment Act gave a unique status to Delhi. It was renamed the National Capital Territory of Delhi, and the administrator became the Lieutenant Governor. This amendment introduced a legislative assembly and a Council of Ministers headed by the Chief Minister for Delhi. The assembly, with 70 members directly elected by the people through elections conducted by the Election Commission of India, can make laws on most matters except public order, police, and land, which are controlled by the Parliament.

The President appoints the chief minister, not the lieutenant governor, and the other ministers are appointed based on the chief minister's advice. Ministers serve at the pleasure of the President and are collectively accountable to the assembly.

- Ten percent of the assembly's total strength is allotted to the council of ministers, which is composed of the Chief Minister and six additional ministers.
- The group of ministers, led by the Chief Minister, provides advice to the Lieutenant Governor in carrying out their duties, except when the Lieutenant Governor needs to make decisions independently.
- If there's a disagreement between the Lieutenant Governor and the ministers, the matter is referred to the President for a decision and acts accordingly.
- In situations where the territory's administration can't be carried out according to the above provisions, the President can suspend them and make necessary provisions to run the territory.
- In simple terms, if the constitutional machinery fails, the President can take control of the territory. This can happen based on the Lieutenant Governor's report or other reasons, similar to Article 356, which deals with the President's Rule in states.
- The Lieutenant Governor has the authority to issue ordinances when the assembly is not in session. An ordinance has the same power as a law passed by the assembly. However, it must be approved by the assembly within six weeks of its reconvening. The Lieutenant Governor can also revoke an ordinance at any time, but they cannot issue one when the assembly is dissolved or suspended.

ISSUES RELATED TO UNION TERRITORIES

Challenges in the Governance of Union Territories

President Rule in The NCT of Delhi

In case of failure of Constitutional machinery in the NCT of Delhi, President can take over the responsibility of administration under **Article 239AB** on receipt of a report from the Lieutenant Governor.

The governance structure of Union Territories (UTs) in India presents several **constitutional and legal challenges** that highlight their inherent fragility within the Indian Federation:

1. **Legislature Composition:** The 14th Constitutional Amendment Act of 1962 included Article 239A, which gives Parliament the authority to create legislatures for UTs. But this has led to a situation where a simple amendment to The Government of Union Territories Act, 1963 can create a legislature that is largely made up of members who have been nominated—more than half of the total.
2. **Issue of Nomination:** According to The Union Territories Act, 1963 Puducherry will have 30 elected members and the Central Government is to appoint not more than 3 nominated MLAs. A legal challenge arose when the Union authority nominated representatives to the Assembly without first contacting the local authority. The Supreme Court of India decided in the 2019 case of K. Lakshminarayanan v. Union of India that nominated members had the same voting rights as elected members and that the State government's consultation was not necessary for nominations. This problem draws attention to a possible lack of accountability and openness in the nomination process.
3. **Arbitrariness in Nomination:** Article 239A and the Government of Union Territories Act do not specify any criteria for the Puducherry Assembly, in contrast to the Rajya Sabha, where such requirements are

mandated. The democratic ideals of representation and knowledge may be compromised by this omission, which encourages arbitrary selection of UT legislative members

4. **Administrator's Power:** Union Territories lack the independence and democratic system required for self-governance. Significant power is vested in the administrator (Lieutenant Governor), who frequently clashes with the legislators of UTs that are elected to government. The administrator may disagree and send issues to the President, who makes decisions in accordance with the advice of the Union government. This structure essentially gives the Union government the authority to decide on contentious matters. Federal cooperation has been impacted by such tensions, which have been noted in areas such as Puducherry and the National Capital Territory of Delhi.
5. **Overlapping Jurisdictions:** A Legislative Assembly for Puducherry is established by the Government of Union Territories Act, 1963, along with a Council of Ministers. The council's recommendations do not, however, bind the administrator. Conflicts and overlapping responsibilities arise between the Union government and the Union Territory's elected government as a result.

DELHI STATEHOOD ISSUE

Background

1. The Delhi State Legislative Assembly having a Chief Minister came into being in 1952 under the Government of Part-C States Act, 1951. (Chief Commissioners Province).

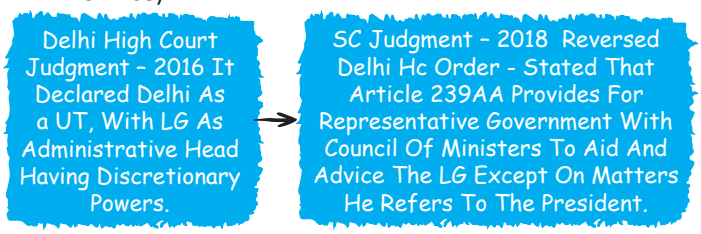

Delhi High Court Judgment – 2016 It Declared Delhi As a UT, With LG As Administrative Head Having Discretionary Powers.
SC Judgment – 2018 Reversed Delhi Hc Order - Stated That Article 239AA Provides For Representative Government With Council Of Ministers To Aid And Advice The LG Except On Matters He Refers To The President.

Fig. 6.14

2. The **States Reorganisation Act, 1957,** conferred UT status on Delhi, to be administered by an Administrator appointed by the President.
3. Limited representative government was provided by the Delhi Administration Act, of 1966. **69th Amendment** added **Article 239AA & Article 239AB** which gave **constitutional status** and the National Capital Territory of Delhi (GNCT) Act, 1991 was enacted based on recommendations of the **Balakrishnan Committee Report.**
4. The Election Commission under **Article 324** conducts elections to the Legislative Assembly of Delhi.

The Government NCT of Delhi Amendment Act (2021)

Under this act, the term **"Government"** referred to in any law made by the Legislative Assembly will imply **Lieutenant Governor of Delhi.** Rules regulating procedure and conduct of business in Delhi Assembly to be consistent with Rules of Procedure and Conduct of Business in Lok Sabha.

The Act Prohibits Delhi Assembly from making any rule to enable itself or its committees to:

- Consider matters of the day-to-day administration of NCT of Delhi
- Conduct any inquiry in relation to administrative decisions.

The Amendment adds that on certain matters, as specified by the Lieutenant Governor, his opinion must be obtained before taking any executive action on the decisions of the Minister/ Council of Ministers

Future Direction

Practicing Co-operative Federalism: In the case of NCT of Delhi v. Union of India (2019), the Supreme Court emphasized that administrators should not misuse their power to obstruct the functioning of elected governments and should use it only when all other reconciliation methods fail. Cooperative federalism should be embraced by both the Union government and UTs.

Exploring the Washington DC Model: The Indian government can consider a model similar to the administrative sharing of power between the Union government and the governments of UTs in Washington DC. In this model, strategic areas and key institutions remain under federal control, while other areas are entrusted to UT governments.

Necessary Reforms: Comprehensive legal and constitutional amendments are required to provide effective autonomy to UT governments, addressing the inherent challenges and conflicts within the current framework.

IGNITE YOUR MIND

How has the unique status of Delhi, as a Union Territory with a special designation as the National Capital Territory, impacted its governance and relationship with the Central government, and what are the implications of its quest for full statehood on India's federal structure?

It is imperative for the Union government to acknowledge the fundamental rationale behind providing legislatures and Councils of Ministers to select UTs, primarily to honor the democratic aspirations of their residents. While UTs operate under central administration, they maintain their distinct identities, as underscored by the Supreme Court. Respecting this principle is crucial to uphold the democratic values and rights of the people in these territories.

NAMING OF INDIA AS BHARAT

There is ongoing debate regarding a potential official change in the country's name, shifting from "India" to "Bharat." It is worth noting that **Article 1** of the Constitution already uses both names interchangeably:

"India, That is Bharat, Shall be a Union of States"

Origin of Name Bharat

The roots of "Bharat," "Bharata," or "Bharatvarsha" trace back to Puranic literature and the epic Mahabharata. In Puranas, Bharata is described as the land between the "sea in the south and the abode of snow in the north."

Origin of Name India

The name "India" can be traced back to the word "Indus", referring to a river flowing through the northwestern part of the subcontinent. The ancient Greeks used the term "Indoi" to describe the people residing beyond the Indus, signifying "the people of Indus." Subsequently, the Persians and Arabs adopted "Hind" or "Hindustan" to denote the land of the Indus. The European adoption of the name "India" was influenced by these sources and became the official name of the nation during the British colonial era.

While "India" has been the widely accepted and official name in modern times, "Bharat" continues to hold cultural and mythological significance in India. The proposal to officially use "Bharat" alongside "India" reflects a desire to reconnect with this historical and mythological heritage.

Deliberation in the Constituent Assembly Regarding India and Bharat

In June 2020, a **Public Interest Litigation (PIL)** aiming to remove "India" from the Constitution and retain only "Bharat" in order to help citizens move past the **colonial legacy** was dismissed by the Supreme Court. The court pointed out that the Constitution already incorporates "Bharat."

The discussion regarding the country's name is not a recent phenomenon. When the Constituent Assembly was drafting the Constitution, there was a divergence of opinions on the name.

Some members argued that "India" carried **colonial connotations** and aimed to give precedence to "Bharat" in official records.

Seth Govind Das, from Jabalpur, strongly advocated for the primacy of "Bharat" over "India", emphasizing that the latter was merely an English translation of the former.

Hari Vishnu Kamath pointed to the Irish Constitution, which, after gaining independence, changed the country's name, serving as a precedent for using "Bharat".

Hargovind Pant asserted that the people desired "Bharatvarsha" and rejected the term "India" imposed on them by foreign rulers.

Regarding "India" and "Hindustan

The name **"Hindustan"** likely derived from **"Hindu," the Persian equivalent of the Sanskrit "Sindhu"** (Indus), which gained prominence during the Achaemenid Persian conquest of the Indus valley in the 6th century BC. The Greeks translated it as "Indus" and by the time of Alexander's invasion in the 3rd century BC, "India" was associated with the region beyond the Indus.

In the 16th century, during the **early Mughal period, "Hindustan"** was used to describe the entire Indo-Gangetic plain. However, in the late 18th century, British maps started using the name "India", and "Hindustan" began to lose its association with all of South Asia. This transition to "India" was partly due to its Graeco-Roman history and adoption by scientific and bureaucratic organizations such as the Survey of India.

Why Does India Have Two Names?

India bears two names, namely "India" and "Bharat," owing to historical and linguistic factors. The language employed in **Article 1** of the Indian Constitution explicitly recognizes both appellations, stating, **"India, known as Bharat, shall constitute a union of states."** This constitutional acknowledgment reflects the nation's unique history, stemming from its independence in 1947 after almost two centuries of British colonial rule.

1. **Historical Roots:** The name "India" finds its origins in the ancient Sanskrit term "Sindhu," signifying the Indus River. It was adopted by Western civilizations to refer to the Indus Valley region, home to one of the world's oldest civilizations, the Indus Valley Civilization. The Greeks and Persians, who interacted with the inhabitants of this region, used the term "Indica" to describe it, which eventually evolved into the English term "India."
2. **Linguistic Diversity:** India is a land of linguistic diversity, with a multitude of languages and dialects spoken across its various regions. "Bharat" serves as the moniker for India in several Indian languages, including Hindi and Sanskrit, each holding ancient cultural and historical significance.
3. **Constitutional Validation:** The Indian Constitution officially recognizes both names. **Article 1** of the

Constitution declares, **"India, that is Bharat,** shall be a Union of States." Consequently, both "India" and "Bharat" hold equal legitimacy as names for the country, with each being constitutionally valid.

4. **Cultural and National Significance:** "Bharat" is often associated with India's rich cultural and historical heritage, while "India" is a name that has gained international recognition and is more commonly used in English-speaking nations. Each name carries its own significance, contributing to different facets of India's identity.

Future Direction

A potential alteration in the country's name could risk alienating segments of the population who have a preference for "India" over "Bharat." It is essential to acknowledge the diverse public sentiment and regional preferences concerning the country's nomenclature, considering the potential cultural and identity implications. The longstanding tradition of using "India" in English and "Bharat" in Hindi, a reflection of India's linguistic diversity, is not only judicious but also in accordance with constitutional principles.

The pertinent question here is whether prioritizing one term over the other should be a primary concern, especially in the current context where the nation faces numerous pressing challenges, including unemployment, environmental degradation, poverty, healthcare issues, inequality, gender discrimination, and more.

CONCLUSION

The provisions outlined in Articles 1, 2, 3, and 4 of the Indian Constitution have played a crucial role in shaping the territorial integrity and federal structure of India. Since independence, the country has witnessed significant state reorganization efforts, aimed at ensuring effective governance, promoting regional development, and accommodating linguistic and cultural diversity. These efforts, including the creation of new states and the reorganization of existing ones, have been guided by the principles of federalism, administrative efficiency, and national unity. The evolving nature of state boundaries and structures reflects India's commitment to democratic governance and the accommodation of diverse regional aspirations within its federal framework.

Citizenship

7

INTRODUCTION

Citizenship has been defined as full and equal membership of a political community. It is a legal status and relation between an individual and a state that entails specific legal rights and duties.

In the contemporary world, states provide a collective political identity to their members as well as certain rights. Therefore, we think of ourselves as Indians, or Japanese, or Germans, depending on the state to which we belong. In any modern country, there are essentially two kinds of people - citizens and aliens.

A citizen is a full member of the particular State and owe allegiance to it. He/she enjoys all political and civil rights.

On the other hand, an alien or a mere resident is a person who belongs to some other political community or state. Hence, they do not enjoy all the civil and political rights. Aliens are further divided into two categories:

Friendly Aliens: These are aliens who come from countries with wich the state has a positive relationship. They are granted certain rights and privileges.

Enemy Aliens: These aliens come from countries considered as adversaries. They are not given the same rights as friendly aliens and might have some of their rights restricted.

This **distinction helps** in defining the different sets of rights and privileges that citizens and aliens have within a country. In India, citizens have specific rights granted to them by the Indian Constitution that are not accessible to foreigners. For example, certain Fundamental Rights are exclusive to Indian citizens.

Fundamental Rights provided exclusively to Indian Citizens

Article 15- Right against discrimination on grounds of religion, race, caste, sex or place of birth.

Article 16- Right to equality of opportunity in the matter of public employment.

Article 19- Right to freedom of speech and expression, assembly, association, movement, residence and profession.

Article 29- Protection of interests of minorities

Article 30- Right of minorities to establish and administer educational institutions

Note: Only citizens have the right to vote in elections to the Lok Sabha and State Legislative Assemblies.

SINGLE CITIZENSHIP

In India, both a citizen by birth as well as a naturalized citizen are eligible for the office of President while in the USA, only a citizen by birth is eligible.

The Indian Constitution is federal with a dual polity (Centre and states) but has only a single citizenship i.e., Indian citizenship. In contrast, the USA and Australia have dual citizenship, where individuals are citizens of both the country and their specific state. This can lead to discrimination, as states may favour their citizens in rights like voting, holding public office, and practicing professions.

To avoid issues related to multiple citizenships, India has a system of single citizenship under which all citizens, regardless of their birthplace or place of residence, enjoy the same political and civil rights throughout the country without any discrimination.

However, there are **certain exceptions** to this general rule:

- **Residence Requirement for Employment:** The Parliament, under Article 16, can specify residence within a state or union territory as a condition for certain employment or appointments in that region or for local authorities.
  - The Parliament enacted the **"Public Employment (Requirement as to Residence) Act, 1957,"** which authorized the Government of India to prescribe residential qualifications only for non-Gazetted posts in Andhra Pradesh, Himachal Pradesh, Manipur, and Tripura. As this act expired in 1974, there are no such provisions for any state except Andhra Pradesh and Telangana (Article 371D).
- **Discrimination Based on Residence:** The Constitution, under Article 15, prohibits discrimination against any Indian citizen based on religion, race, caste, sex, or place of birth. However, states have the discretion to provide special benefits or preferences to their residents in areas that are not covered by the rights granted by the Constitution. For example, a state may offer education fee concessions to its residents.
- **Protection of Tribal Interests:** The freedom of movement and residence (under Article 19) is subject to the protection of the interests of scheduled tribes. This

means that the right of outsiders to enter, reside, and settle in tribal areas is restricted to protect the distinctive culture, language, customs, and traditions of scheduled tribes and to safeguard their traditional livelihoods and property from exploitation.

Only citizens are eligible for certain offices Judge of the Supreme Court of India Vice-President of India Attorney General of India President of India Advocate General of India Member of Parliament or Legislative assembly and Governor of a state.

PROVISIONS FOR THE CITIZENSHIP IN THE CONSTITUTION

Citizenship provisions in the Indian Constitution are outlined in **Part II and covered from Articles 5 to 11.** However, these provisions solely identify those who became Citizens of India on January 26, 1950 and lack detailed regulations. The Constitution has empowered Parliament to enact a law to provide for matters like acquisition and loss of citizenship. Correspondingly, Parliament enacted the Citizenship Act (1955), which has been amended many times subsequently in 1957, 1985, 1986, 1992, 2003, 2005, 2015 and 2019.

Table 7.1: Articles Related to Citizenship in India

Article 5 - Citizenship at the commencement of the Constitution	Under this, every person who had his/her domicile in the territory of India at the commencement of the Constitution of India, shall be a citizen of India, provided he fulfilled any of the following three conditions, i.e.- 1. If he/she was born in the territory of India; or 2. If either of his/her parents was born in the territory of India; or 3. if he/she has been ordinarily resident in the territory of India for not less than five years immediately preceding such commencement. **NOTE:** The term "every person" includes (i) a prisoner (ii) a member of armed forces (subject to Article 33)
Article 6 - Rights of citizenship of certain persons who have migrated to India from Pakistan	Notwithstanding anything in Article 5, a person who has migrated to the territory of India from the territory now included in Pakistan shall be deemed to be a citizen of India at the commencement of the Constitution of India, if he or either of his parents or any of his grandparents were born in undivided India as defined in the Government of India Act, 1935. Additionally, they need to meet one of these two conditions: 1. If they moved before July 19, 1948, they must have lived in India since they migrated. 2. If they moved after July 19, 1948, they must have been officially recognized as an Indian citizen by the Indian government. However, this recognition only happens if they have lived in India for at least six months before applying.
Article 7- Rights of citizenship of certain migrants to Pakistan	Regardless of what is mentioned in Articles 5 and 6, someone who moved from India to Pakistan after March 1, 1947, and then came back to India to live permanently could become an Indian citizen. To do this, they need to have been living in India for at least six months before applying for citizenship.
Article 8- Rights of citizenship of certain persons of Indian origin residing outside India	This provision applies to people of Indian origin living in foreign countries who want to become Indian citizens. To qualify, a person must meet these conditions: - Either they, their parents, or their grandparents were born in undivided India as defined under the Government of India Act, 1935, but they have been living in another country. - They have been officially registered as an Indian citizen by the Indian embassy or consulate in the country where they live, either before or after the Indian Constitution was introduced.
Article 9 - Persons voluntarily acquiring citizenship of a foreign state not to be citizens	It means that if someone has willingly become a citizen of another country, they cannot automatically be a citizen of India based on Article 5, 6, or 8. This article prohibits dual citizenship.
Article 10 - Continuance of the rights of citizenship	Each individual recognized as an Indian citizen according to the previous sections of this part will remain an Indian citizen, subject to the provisions of any law that may be made by the Parliament.
Article 11 - Parliament to regulate the right of citizenship by law	The previous rules in this section don't take away Parliament's authority to create laws about acquisition and termination of citizenship and all things connected to it.

THE CITIZENSHIP ACT, 1955

The Citizenship Act of 1955 tells us how you can become a citizen of India or lose Indian citizenship after the Constitution started. Originally, this law also talked about Commonwealth Citizenship, but that part was taken out by the Citizenship (Amendment) Act of 2003.

❑ **Citizenship by Birth (Section 3)**

- A person **born in India** has different rules for citizenship based on when they were born:
  - ❒ If they were born between January 26, 1950, and before July 1, 1987, they are automatically Indian citizens, regardless of their parents' nationality.
  - ❒ If they were born on or after July 1, 1987, but before December 3, 2004, they are Indian citizens by birth if at least one of their parents is an Indian citizen when they were born.
  - ❒ If they were born on or after December 3, 2004, they are Indian citizens by birth if:
    - ◊ Both of their parents are Indian citizens, or
    - ◊ One of their parents is an Indian citizen, and the other is not an illegal immigrant at the time of their birth.

❑ **Citizenship by Descent (Section 4)**

There are some exceptions:

They won't be Indian citizens if one of their parents is a foreign diplomat and is not an Indian citizen.

They won't be Indian citizens if one of their parents is considered an enemy alien, and their birth happens in a place under enemy occupation.

- A person **born outside India** can become an Indian citizen through descent under these conditions:
  - ❒ If they were born between January 26, 1950, and before December 10, 1992, and if his father was an Indian citizen by birth at time of his birth.
  - ❒ If they were born on or after December 10, 1992, but before December 3, 2004, and either of his parents was an Indian citizen by birth at time of his birth.
  - ❒ If they were born on or after December 3, 2004, they can become an Indian citizen if their birth is registered at an Indian Consulate within one year of their birth, or with the permission of the Central Government after that period. Additionally, their parents need to register their birth and confirm in writing that the child doesn't have a passport from another country.

❑ **Citizenship by Registration (Section 5)**

Persons of full age and capacity can also acquire Indian citizenship under this section, if-

- ❑ Both their parents are registered as citizens of India.
- ❑ He or either of the parents were earlier citizen of Independent India and residing in India for ONE YEAR immediately before making an application.
- ❑ He has been registered as an Overseas Citizen of India (OCI) for 5 years and residing in India for ONE YEAR before making application.

- Indian **Citizenship** can be acquired through registration **(not for an illegal migrant).** For this, a person shall be deemed to be a **"Person of Indian Origin"** if he, or either of his parents, were born in undivided India or in such other territory which became part of India after 15th day of August 1947.
- To acquire citizenship by registration, a person should fulfill the following conditions-
  - ❒ Persons of Indian origin should be **ordinarily resident in India for SEVEN YEARS** before making an application under this section. (Throughout the period of twelve months immediately before making application and for SIX YEARS in the aggregate in the EIGHT YEARS preceding the twelve months).
  - ❒ Persons of Indian origin who are ordinarily resident in any country or place outside undivided India.
  - ❒ Persons who are married to a citizen of India and who are ordinarily resident in India for SEVEN YEARS before making an application.
  - ❒ Minor children whose both parents are Indian citizens.
  - ❒ a person of full age and capacity who has been registered as an Overseas Citizen of India Cardholder for five years, and who is ordinarily resident in India for twelve months before making an application for registration

❑ **Citizenship by Naturalisation (Section 6)**

- Foreigners (who are not illegal migrants) can become Indian citizens by naturalisation under certain conditions. These conditions include:
  - ❒ Living in India **continuously for twelve years,** with the last year just before applying and a total of eleven years within the previous fourteen years.
  - ❒ **Not being a citizen of a country** that doesn't allow Indian citizens to become citizens by naturalization.
  - ❒ Being willing to give up the citizenship of any other country if application for Indian citizenship is accepted.

- Having a **good character.**
- Knowing one of the languages listed in the Eighth Schedule of the Indian Constitution.
- Planning to live in India, work for the Indian government, or work for an international organization that India is a part of.
- Every naturalised citizen must take an oath of allegiance to the Constitution of India.

The Citizenship (Amendment) Act, 1985, introduced special rules for people mentioned in the Assam Accord, which dealt with foreigners in Assam:

(a) Anyone of Indian origin who came to Assam from Bangladesh before January 1, 1966, and has been living in Assam since then, will be considered an Indian citizen from January 1, 1966.

(b) People of Indian origin who arrived in Assam between January 1, 1966, and March 25, 1971, from Bangladesh and have been living in Assam since their arrival, but were identified as foreigners, must register themselves. Once registered, they will become Indian citizens after ten years from the date of being identified as a foreigner. During these ten years, they will have the same rights and duties as Indian citizens, except for the right to vote.

- **Citizenship by Incorporation of Territory (section 7)**
  - When a foreign land becomes a part of India, the Indian government can decide who becomes an Indian citizen from that place. They will announce it in the Official Gazette, and those people will officially become Indian citizens from the date mentioned in the announcement.
  - For instance, when Pondicherry became a part of India, the people of Pondicherry became Indian citizens through the **Citizenship (Pondicherry) Order, 1962,** which was made under the Citizenship Act, 1955.

The Citizenship (Amendment) Act, 2019 introduced special rules for people who came to India from Afghanistan, Bangladesh, or Pakistan and belong to Hindu, Sikh, Buddhist, Jain, Parsi, or Christian communities. These rules apply to those who arrived in India on or before December 31, 2014 and were exempted from certain passport and immigration laws.

Here are the key points:

- The Indian government can grant citizenship to these individuals based on specific conditions. Once granted, they will be considered Indian citizens from the date they entered India.
- Any legal actions related to their immigration status will be dropped once they become citizens.
- These special provisions don't apply to certain areas in Assam, Meghalaya, Mizoram, and Tripura, as defined in the Sixth Schedule to the Constitution, or in areas covered by "The Inner Line" under the Bengal Eastern Frontier Regulation, 1873.
- Before the Citizenship (Amendment) Act, 2019, people from these communities who entered India without proper documents were considered illegal migrants and couldn't apply for Indian citizenship under the Citizenship Act, 1955. In 2015, the Indian government exempted them from certain legal consequences and allowed them to apply for long-term visas in 2016.

The Citizenship (Amendment) Act, 2019 came into effect on January 10, 2020, making these migrants eligible for Indian citizenship.

LOSS OF CITIZENSHIP

The Citizenship Act, 1955, outlines three methods by which an individual can lose their citizenship, regardless of whether they acquired it through this Act or earlier under the Indian Constitution.

- **Renunciation of Citizenship (Section 8)**
  - If any citizen of India of full age and capacity, makes in the prescribed manner a declaration renouncing his Indian Citizenship, the declaration shall be registered by the prescribed authority; and, upon such registration, that person shall cease to be a citizen of India. However, if this decision is made during a war involving India, the government can delay the process until they decide otherwise. When a person loses their Indian citizenship, any minor children they have will also lose their Indian citizenship. But, if such a child, after turning eighteen, wants to become an Indian citizen again, they can do so by making a declaration within one year of their eighteenth birthday.
- **Termination of Citizenship (Section 9)**
  - Any Indian citizen who willingly becomes a citizen of another country, either before the commencement of this law or after January 26, 1950, will no longer be considered an Indian citizen. However, this rule doesn't apply during times of war involving India. If there's a question about when or how someone acquired another country's citizenship, it will be decided by a designated authority following specific rules of evidence and guidelines set by the law. It's important to note that getting another country's passport is also considered as voluntarily acquiring their nationality, as stated in the Citizenship Rules of 1956.

- **Deprivation of Citizenship (section 10)**
  - The Indian government has the authority to revoke an individual's Indian citizenship under specific circumstances, such as when:
    - The **person acquired citizenship through deceit, false statements, or by hiding important information**.
    - The individual has demonstrated **disloyalty or dissent** towards the Constitution of India through their actions or words.
    - **During a war** involving India, the **person engaged in unlawful trade or communication** with an enemy, or associated with businesses that knowingly supported an enemy during the war.
    - Within five years of becoming a citizen through **registration or naturalization**, the person received a **prison sentence of at least two years in any country**.
    - The person **resided outside India continuously for seven years**, with exceptions for the following:
      - Who were students in a foreign country,
      - Employed by the Indian government,
      - A member of an international organization India belongs to, or regularly registered their intent to retain Indian citizenship at an Indian consulate.

The Central Government can only revoke a person's citizenship if it believes that allowing that individual to remain an Indian citizen would not be in the best interest of the public.

CONCEPT OF DUAL CITIZENSHIP

Citizenship can be acquired in various ways, and it is possible for someone to be recognized as a citizen of two or more countries simultaneously, a situation known as dual citizenship. Dual citizens typically hold two passports and enjoy the freedom to live, work, and travel in both their home country and the country they've become a citizen of. For instance, South Korea and the United States allow their citizenships to coexist.

L M Singhvi committee recommended the amendment of the Citizenship Act 1955 to provide for the grant of dual citizenship to the Persons of Indian Origin (PIO's) belonging to certain specified countries.Citizenship (amendment) Act 2003 , made the provision for the acquisiton of Overseas Citizenship of India (OCI) by the PIO's of 16 countries other than Pakistan and Bangladesh. It also omitted all provisions relating to Commonwealth Citizenship from the Principal Act.

Initially, India also did not grant any special rights to people of Indian origin living in other countries. However, the government established a High-Level committee on Indian Diaspora, led by **L.M. Singhvi**, to conduct a comprehensive study of the global Indian Diaspora and suggest ways to foster a positive relationship with them. Based on these recommendations, the Indian Parliament amended the Citizenship Act in 2002 and introduced two distinct statuses:

- **Person of Indian Origin Card (PIO) Scheme:** This scheme is for individuals who, or their ancestors, were Indian nationals and currently hold the citizenship or nationality of another country, meaning they possess a foreign passport.
- **Overseas Citizenship of India:** This status is designed for those PIOs who have moved from India, acquired foreign citizenship (except from Pakistan and Bangladesh), and are eligible for specific benefits, "as long as their home countries allow dual citizenship in some form according to their local laws."

OVERSEAS CITIZEN OF INDIA

The Citizenship (Amendment) Act, 2015, brought about significant changes to the provisions related to the Overseas Citizen of India (OCI) status as outlined in the Principal Act. This act introduced a new category known as the "Overseas Citizen of India Cardholder," consolidating both the Persons of Indian Origin (PIO) card scheme and the OCI card scheme.

The PIO card scheme was initially introduced on August 19, 2002, followed by the introduction of the OCI card scheme on December 2, 2005. These two schemes were in operation concurrently, even though the OCI card scheme had gained more popularity. This situation led to confusion among applicants. To address these issues and provide improved services to applicants, the Government of India decided to create a single scheme that merged the positive aspects of both the PIO and OCI schemes. To achieve this goal, the Citizenship (Amendment) Act, 2015, was enacted.

As part of this act, the PIO scheme was rescinded effective January 9, 2015, and it was also notified that all existing PIO card holders would be considered OCI cardholders from the same date.

Moreover, the Citizenship (Amendment) Act, 2015, replaced the terminology "Overseas Citizen of India" with "Overseas Citizen of India Cardholder" and introduced various provisions within the Principal Act to accommodate these changes.

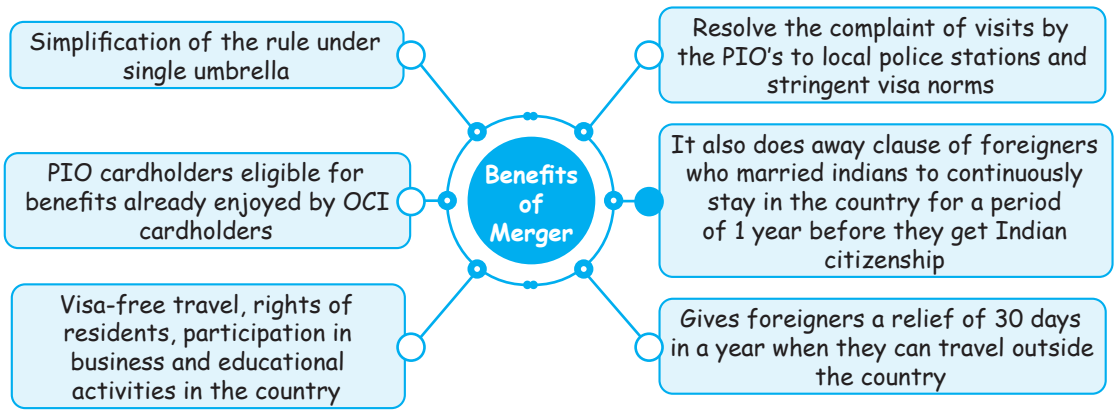

Benefits of Merger
Simplification of the rule under single umbrella
PIO cardholders eligible for benefits already enjoyed by OCI cardholders
Visa-free travel, rights of residents, participation in business and educational activities in the country
Resolve the complaint of visits by the PIO's to local police stations and stringent visa norms
It also does away clause of foreigners who married indians to continuously stay in the country for a period of 1 year before they get Indian citizenship
Gives foreigners a relief of 30 days in a year when they can travel outside the country

Fig. 7.4: Benefits of OCI and PIO Merger

Registration of Overseas Citizen of India Cardholder

- The **Central Government** has the authority to grant status of Overseas Citizen of India Card to any person of full age and capacity who falls under one of the following categories upon application:
  - A citizen of another country who was a citizen of India at the time of, or at any time after, the commencement of the Constitution.
  - A citizen of another country who was eligible to become a citizen of India at the time of the commencement of the Constitution.
  - A citizen of another country who belonged to a territory that became part of India after August 15, 1947.
  - A child, grandchild, or great-grandchild of such an individual or
    - Any person who is a minor child of a person mentioned in clause.
    - Any person who is a minor child and has both parents as citizens of India, or at least one parent who is a citizen of India.
    - The foreign-origin spouse of a citizen of India or the foreign-origin spouse of an Overseas Citizen of India Cardholder, provided that their marriage has been registered and has lasted for a continuous period of not less than two years immediately preceding the application.
- No person, or any of their parents, grandparents, or great-grandparents, who is or has been a citizen of Pakistan, Bangladesh, or any other country specified by the Central Government, is eligible for registration as an Overseas Citizen of India Cardholder.
- The Central Government has the authority to determine the date from which existing Persons of Indian Origin cardholders will be considered overseas citizens of India cardholders.
- In exceptional circumstances, the Central Government, if satisfied, may register a person as an Overseas Citizen of India Cardholder after recording the circumstances in writing.

Rights Given to Overseas Citizen of India Cardholders

- **An overseas citizen of India (OCI) cardholder** is entitled to certain rights specified by the Central Government. Some of these rights are listed below:
  - Multiple entry lifelong visa for visiting India for any purpose.
  - Exemption from registration with Foreigners Regional Registration Officer for any length of stay in India.
  - Parity with NRIs in respect of economic, financial and education fields except in matters relating to the acquisition of agricultural/plantation properties.
- **Benefits given to Registered Overseas Citizen of India Cardholder are as follows:**
  - Parity with Non-Resident Indians in the matter of inter-country adoption of Indian children.
  - Parity with resident Indian nationals in matters of tariffs in domestic air fares.
  - Parity with domestic Indian visitors in respect of entry fee for visiting national parks and wildlife sanctuaries in India.
  - Parity with non-resident Indians in respect of:
    - Entry fees for visiting the national monuments, historical sites and museums in India.
    - Practicing the following professions in India, in pursuance of the provisions contained in the relevant Acts, namely: Doctors, dentists, nurses and pharmacists, Advocates, Architects and Chartered Accountants
  - Entitlement to appear for the All India Pre-Medical Test or such other tests to make them eligible for admission in pursuance of the provisions contained in the relevant Acts.

As on 31st January, 2022 **40.68 lakh** OCI registration cards were issued.

- However, an OCI cardholder is not entitled to the following rights, which are conferred on a citizen of India:
- Right to equality of opportunity in matters of public employment (Article 16)
- Eligibility for election as President (Article 58)
- Eligibility for election as Vice-President (Article 66)
- Eligibility for appointment as a Judge of the Supreme Court (Article 124)
- Eligibility for appointment as a Judge of the High Court (Article 217)
- Entitlement for registration as a voter.
- Eligibility for membership in the House of the People or the Council of States.
- Eligibility for membership in the State Legislative Assembly or the State Legislative Council.
- Eligibility for appointment to public services and posts related to the affairs of the Union or any State, except for those services and posts specified by the Central Government.

Renunciation of Overseas Citizen of India Card

- If an Overseas Citizen of India Cardholder submits a declaration in the prescribed manner, the Central Government registers this declaration. **Upon registration, the individual no longer holds** the status of an overseas citizen of India cardholder.
- When a person ceases to be an Overseas Citizen of India Cardholder, their **spouse** of foreign origin, who possesses an overseas citizen of India card, and **every minor** child registered as an overseas citizen of India cardholder, **will also lose** their overseas citizen of India cardholder status.

Cancellation of Registration as Overseas Citizen of India Cardholder

- The registration of an individual as an **overseas citizen of India cardholder** can be revoked by the Central Government under certain circumstances, as follows:
  - If the registration as an overseas citizen of India cardholder was obtained through fraud, false representation, or the concealment of any material fact.
  - If the overseas citizen of India cardholder has demonstrated disaffection towards the Constitution of India.
  - If the overseas citizen of India cardholder has, during any war in which India may be engaged, unlawfully traded or communicated with an enemy.
  - If the overseas citizen of India cardholder has, within five years after registration, been sentenced to imprisonment for a term of not less than two years.
  - If it is deemed necessary to do so in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country, or in the interests of the general public.
  - If the marriage of an overseas citizen of India cardholder:
  - Has been dissolved by a competent court of law or otherwise.
  - Has not been dissolved, but during the subsistence of such marriage, he has solemnized marriage with any other person.

A Non-Resident Indian (NRI) is an individual with Indian citizenship who typically resides outside of India while holding an Indian Passport. NRIs enjoy all the benefits that are available to Indian citizens, but these privileges are subject to notifications issued by the Government as per the current regulations. One notable advantage for NRIs is that they do not require a visa to visit India and can engage in various activities within the country.

STEPS TAKEN BY GOVERNMENT FOR THE BENEFIT OF INDIAN DIASPORA

Pravasi Bhartiya Divas (PBD) is commemorated on the **9th of January** annually to recognize the substantial contributions of the Overseas Indian community to India's development. The selection of January 9 for this celebration holds special significance, as it marks the day in 1915 when Mahatma Gandhi, a prominent Pravasi, returned to India from South Africa.

PBD conventions have been a recurring event since 2003. However, since 2015, the format has evolved to celebrate PBD once every two years. In the intervening years, theme-based PBD Conferences are held, featuring active participation from overseas diaspora experts, policy makers, and stakeholders. These gatherings serve as a vital platform for the overseas Indian community to interact with the government and the people of their ancestral homeland, fostering mutually beneficial activities.

Notably, the Pravasi Bharatiya Samman Award is presented during the event to individuals of exceptional merit. This prestigious accolade recognizes their pivotal roles in India's progress and development. Furthermore, PBD serves as a forum for the discussion of significant issues related to the Indian Diaspora, allowing for the exchange of valuable insights and perspectives.

Ministry of Overseas Indian Affairs

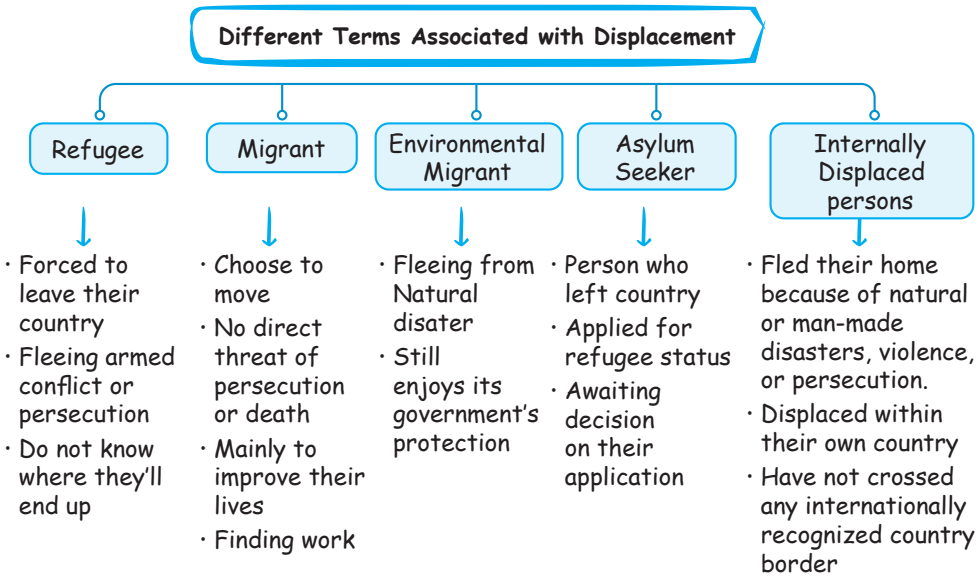

Different Terms Associated with Displacement
Refugee
Migrant
Environmental Migrant
Asylum Seeker
Internally Displaced persons
· Forced to leave their country
· Fleeing armed conflict or persecution
· Do not know where they'll end up
· Choose to move
· No direct threat of persecution or death
· Mainly to improve their lives
· Finding work
· Fleeing from Natural disater
· Still enjoys its government's protection
· Person who left country
· Applied for refugee status
· Awaiting decision on their application
· Fled their home because of natural or man-made disasters, violence, or persecution.
· Displaced within their own country
· Have not crossed any internationally recognized country border

Fig. 7.8: Terms Associated with Displacement

The Ministry of Overseas Indian Affairs (MOIA), was initially established in May 2004 under the name Ministry of Non-Resident Indians' Affairs, and was later renamed MOIA in September 2004.

Its primary mission was to foster connections between the Indian Diaspora community and their homeland, with a focus on development through global collaborations.

As a Services' Ministry, MOIA provided information, partnerships, and support for matters concerning Overseas Indians, including Persons of Indian Origin (PIOs) and Non-Resident Indians (NRIs). In addition to its core responsibilities, the Ministry also undertook various initiatives related to trade, investment, emigration, education, culture, health, and science & technology.

However, in 2016, MOIA was merged with the Ministry of External Affairs (MEA) as most of its functions were already carried out by MEA. This merger led to the establishment of a division within MEA, which currently handles the functions previously managed by MOIA.

Refugee Status in India

India has refrained from ratifying the 1951 United Nations Refugee Convention or its 1967 Protocol concerning the Status of Refugees. This absence of specific refugee legislation has resulted in an improvisational approach by the government to handle diverse refugee inflows. The status of refugees in India primarily hinges on political and administrative decisions rather than a standardized set of regulations. The government's ad hoc methods have led to varied treatment of distinct refugee groups. While some groups receive a comprehensive array of benefits, including legal residency and authorization for gainful employment, others face criminalization and are deprived of essential social resources.

REFUGEE VS. ASYLUM SEEKER: UNDERSTANDING THE DISTINCTION

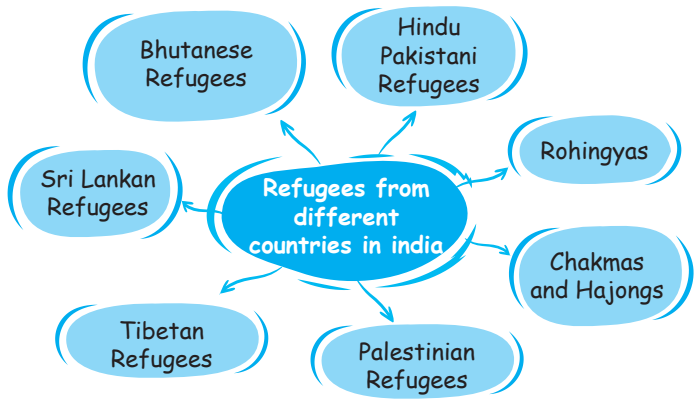


Fig. 7.10: Refugees from Different Countries in India

When individuals flee their homeland in search of sanctuary in another nation, they typically apply for asylum. Asylum grants them the right to be recognized as refugees, providing them with legal protection and necessary assistance. To be eligible for asylum, an individual must demonstrate that their fear of persecution in their home country is well-founded. Consequently, a refugee is essentially an asylum seeker whose application for asylum has been approved.

India has one of the largest refugee populations in South Asia, and historically, it has been accommodating to refugees. However, India lacks a uniform asylum policy currently.

In the contemporary world, the need for a uniform asylum policy in India is increasingly evident due to several compelling reasons:

- **Case-by-Case Basis:** The absence of a uniform policy necessitates that the government assesses asylum requests on a case-by-case basis. This process is **time-consuming and lengthy.**
- **Global Leadership Aspirations:** India aspires to have a permanent seat in the United Nations Security Council (UNSC) and seek membership in groups like the Nuclear Suppliers Group (NSG). To establish itself as a global leader, having a well-defined refugee policy is essential to enhance its international goodwill.
- **Strategic Advantages:** A well-crafted asylum policy can aid India in dealing with issues like the Balochistan conflict. It would garner support from leaders advocating for humanitarian causes and enhance India's strategic stance.
- **UN Peacekeeping Efforts:** India is a significant contributor of troops to UN Peacekeeping missions. Implementing an asylum policy would complement these contributions and align with India's **international commitments.**

However, the **adoption of a uniform asylum policy** also poses certain **challenges:**

- **Porosity of Borders:** South Asian borders are highly porous, and conflicts can lead to mass migrations, straining local infrastructure, resources, and upsetting demographic balances.
- **Restrictions on Repatriation:** A formal asylum policy may restrict India from repatriating refugees against their will, which can be essential to address political crises.
- **Unintended Consequences:** Providing shelter to every refugee can inadvertently lead to issues such as human trafficking, drug trafficking, and abuse. This may place additional financial and administrative burdens on the state.

The **recently enacted Citizenship Amendment Act of 2019** represents a step towards developing a comprehensive asylum policy. However, there is still work to be done to broaden its scope and ensure it addresses all asylum-related cases comprehensively.

CITIZENSHIP AMENDMENT ACT OF 2019

Citizenship Amendment Act of 2019 aims to make **amendments** to the **Citizenship Act of 1955.**

Background

The **Citizenship (Amendment) Act of 2003** established that **'illegal migrants'** could not apply for citizenship through registration or naturalization.

However, in recognition of the challenges faced by minorities in certain neighboring countries, some concessions have been made, including:

- **The Foreigners Act of 1946,** regulates the entry and departure of foreigners in India, and the **Passport (Entry into India) Act of 1920** mandates foreigners to carry a passport and empowers the Central Government to detain or deport illegal migrants.
- In 2015 and 2016, the central government issued notifications exempting specific groups of illegal migrants from the provisions of the 1946 and 1920 Acts. These groups include Hindus, Sikhs, Buddhists, Jains, Parsis, and Christians from Afghanistan, Bangladesh, and Pakistan, who arrived in India on or before December 31, 2014.

Arguments in Favour of the Amendment Act

- **Religious Persecution:** The Nehru-Liaquat Pact, signed in 1950, aimed to provide safeguards and rights to religious minorities, including the non-recognition of forced conversions and the return of abducted women and looted property. However, Afghanistan, Pakistan, and Bangladesh have state religions with discriminatory blasphemy laws, religious violence, and forced conversions, resulting in religious persecution of minority groups. For example, the non-Muslim minority population in Bangladesh declined from 23.20% in 1951 to approximately 9.6% in 2011.
- **Addressing Illegal Immigration:** Illegal immigration from neighbouring countries has been a contentious issue for decades. In Assam, a six-year-long agitation that began in 1979 demanded the identification and deportation of all illegal foreigners, primarily Bangladeshi immigrants. This act aims to differentiate between illegal immigrants and persecuted communities seeking refuge.

Argument Against Amendment Act

The Citizenship (Amendment) Act, 2019 (CAA) has been criticized for its religious-centric approach:

- **Constitutional violation:** The protestors claim that the law violates the Constitution as it aims to grant Indian citizenship on the basis of religion.
- **Targeting Muslims:** The fundamental criticism of the act has been that it specifically targets Muslims.
- **Non-Muslims:** There are concerns that the amendment provides a "shield" to the non-Muslims, who can claim that they were migrants who fled persecution from Afghanistan, Pakistan, or Bangladesh, while the Muslims do not have such a benefit.

- Citizenship extends beyond mere **legality;** it is intricately linked to broader concepts of equality and rights.
- At the core of conception of citizenship lies the notion of 'equality', encompassing two fundamental aspects:
  - An improvement in the quality of rights and duties.
  - An expansion in the number of individuals to whom they are granted.
- Citizenship can be classified into three distinct types of rights: civil, political, and social.

CONCLUSION

Civil rights safeguard an individual's life, liberty, and property. Political rights empower individuals to engage in the governance process, while social rights provide access to education and employment. These rights collectively enable citizens to lead a life characterized by dignity and opportunity.

Amendment to the Constitution

8

"The Assembly has not only refrained from putting a seal of finality and infallibility upon this Constitution by denying the people the right to amend the Constitution as in Canada or by making the amendment of the Constitution subject to the fulfillment of extraordinary terms and conditions as in America or Australia, but has provided for a facile procedure for amending the Constitution."

–Dr. B. R. Ambedkar

INTRODUCTION

The word **'Constitution'** comes from the **latin word 'constituere',** which means **'to set up' or 'establish.'** In simple terms, a Constitution refers to a set of rules which outline how a government works and how it interacts with the people in terms of their rights and duties. Constitutions are the bedrock of any nation's governance system, which provide a framework of laws and principles that guide the functioning of the state.

Framers of our Constitution felt that the Constitution should take into account both the aspirations of the people and developments in society. They did not view the Constitution as an infallible, holy text, which is why they had clauses that allowed for the occasional addition of changes. We refer to these modifications as **Constitutional Amendments.** Nonetheless, the Indian Constitution's amending process is neither as simple as it is in Britain nor as complex as it is in the USA. In essence, the Indian Constitution can be described as a harmonious blend of flexibility and rigidity, striking a balance between the two.

Article 368 in Part XX of the Constitution is dedicated to the **powers of Parliament** concerning the amendment of the Constitution and the procedure for doing so. According to this article, Parliament, in the exercise of its constituent power, has the authority to amend any provision of the Constitution by means of addition, variation, or repeal, following the prescribed procedure.

Article 368 in Part XX of the Constitution is dedicated to the **powers of Parliament** concerning the amendment of the Constitution and the procedure for doing so. According to this article, Parliament, in the exercise of its constituent power, has the authority to amend any provision of the Constitution by means of addition, variation, or repeal, following the prescribed procedure.

TYPES OF CONSTITUTION

In the world of Constitutional governance, we classify Constitutions as either **"rigid" or "flexible."** This categorization was introduced by **Lord James Bryce.**

Table 8.1: Types of Constitution

Rigid	Flexible
❑ Rigid Constitution is known as an "inelastic" Constitution, notable examples are Australian and American Constitution. ❑ A rigid Constitution is the one that cannot be amended in the same manner as ordinary laws. ❑ It necessitates a distinct and specialized procedure for its amendment. ❑ It draws a clear demarcation between Constitutional law and ordinary law.	❑ A flexible Constitution is often referred to as an "elastic" Constitution, for example New Zealand Constitution. ❑ A flexible Constitution is one which can be amended in the same manner as ordinary laws. ❑ It doesn't necessitate a distinct and specialized procedure for its amendment. ❑ It doesn't draw a clear demarcation between Constitutional law and ordinary law.

COMPARISON BETWEEN WRITTEN AND UNWRITTEN CONSTITUTIONS

While written and unwritten Constitutions differ in their form and structure, both types serve as the foundation for governance in their respective countries.

Table 8.2: Differences Between Written and Unwritten Constitution

	Written Constitution	Unwritten Constitution
Meaning	A written Constitution is one that has been organized, collated, and codified in a systematic and coherent way.	The term "unwritten Constitution" describes a Constitution that has not been formally codified.
Evolution	Systematic and step-by-step formulation.	Gradual development over time.
Structure	Codified and compiled in a single document.	Collection of laws, customs, conventions, and traditions.
Flexibility	Majorly flexible, but can have rigid provisions.	Flexible, adaptable to changing circumstances.
Supremacy	The Constitution is supreme.	Parliament or legislature is supreme.
Judicial Power	Judiciary ensures Constitutional supremacy.	Limited judicial power.
Examples	United States, India, Germany.	United Kingdom, New Zealand, Israel.

NATURE OF THE AMENDMENT

The **amending process** envisioned by the framers of our Constitution can be most accurately described by referring to **Pandit Nehru's statement,** where he emphasized that the Constitution should not be overly inflexible to the point that it cannot be adjusted to meet the evolving requirements of national progress and resilience. **Elements of flexibility** were therefore imported into the Constitution, which is inherently rigid in its nature.

The framers of our Constitution were also driven by the necessity of parliamentary sovereignty, elected through universal adult suffrage, to promote dynamic national progress. They introduced a more straightforward method for altering provisions of the Constitution that did not primarily impact the federal system. This was achieved in two ways:

- By specifying that certain Constitution provisions were "not to be deemed as an amendment of the Constitution." This means that these provisions can be modified by the Union Parliament through the normal legislative process, requiring a simple majority vote.
- Other provisions of the Constitutioncan be changed only by the process of " amendment" which is prescribed in the article 368. But a differentiation has been made in the procedure for amendment, according to the nature of the provisions sought to be amended.

TYPES OF AMENDMENTS

Article 368 outlines two distinct methods for amending the Constitution: One through a special majority of Parliament and the other by obtaining the ratification of at least half of the states through a simple majority.

However, some other articles within the Constitution allow for amendments by a simple majority of Parliament. Importantly, these amendments do not fall under the purview of Article 368 for Constitutional amendment purposes.

The Process for Amending The Constitution, As Outlined In Article 368, Entails The Following Steps

AMENDMENT PROCEDURE

1. INITIATION:
An amendment to the Constitution can be initiated only by the introduction of a bill for the purpose in either House of Parliament. State legislatures do not have the authority to initiate such amendments

2. INTRODUCTION:
This bill can be introduced either by a minister or a private member and does not require prior permission from the president.

3. SPECIAL MAJORITY:
The bill must be passed in each House by a simple majority. This special majority means a majority of the total membership of the House and a majority of two-thirds of the members of the House who are present and voting.

4. SEPARATE PASSAGE:
Each House must individually pass the bill. If there is a disagreement between the two Houses, there is no provision for holding a joint session to resolve the matter.

5. RATIFICATION:
If the bill seeks to amend federal provisions of the Constitution, it must also be ratified by the legislatures of at least half of the states by a simple majority, meaning a majority of the members of the House present and voting

6. PRESIDENTIAL ASSENT:
Once the bill is duly passed by both Houses of Parliament and ratified by the necessary state legislatures, it is presented to the president for his assent.

7. PRESIDENT OBLIGATION:
The president is obligated to give his assent to the bill and cannot withhold it or return the bill for reconsideration by Parliament.

8. CONSTITUTIONAL AMENDMENT:
Following the president's assent, the bill becomes an Act, referred to as a constitutional amendment act. The Constitution is amended in accordance with the terms of this Act.

Fig. 8.1: Process for Amending the Constitution.

Understanding Various Majorities in Parliament with Examples

Table 8.3: Types of Majority

Type of Majority	Explanation	Minimum Votes needed to Pass the Bill/Motion
Simple Majority	Majority of the members present and voting	Day 1: 50% plus 1 of 270 = 136 Day 2: 50% plus 1 of 480 = 241
Absolute Majority	Majority of the total membership of the House	Day 1: 50% plus 1 of 543 = 272 Day 2: 50% plus 1 of 543 =272
Effective Majority	Majority of the effective strength of the House (i.e. Total Strength minus vacancies)	Day 1: 50% plus one of (543-4-3)=269 votes Day 2: same as Day 1
Special Majority under Article 249	Majority of not less than 2/3 of the members present and voting	Day 1: 2/3 of 270 = 180 votes Day 2: 2/3 of 480 = 320 votes
Special Majority under Article 368	Majority of the total membership and by a majority of not less than 2/3 of members present and voting	Day 1: 50% plus 1 of 543 = 272 and 2/3 of 270 = 180 votes So, at least 272. Day 2: 50% plus 1 of 543 = 272 and 2/3 of 480 = 320 votes So, at least 320.
Special Majority under Article 61	Majority of not less than 2/3 of the total membership	Day 1: 2/3 of 543 = 362 votes Day 2: Same as Day 1

Apart from the commonly known effective, simple, and absolute majorities, there exists a distinct category known as "special majority" within parliamentary and legislative procedures. Special majorities come into play for specific circumstances and are delineated by distinct clauses in the law. There are four kinds of special majorities, each linked to different constitutional articles:

Apart from the commonly known effective, simple, and absolute majorities, there exists a distinct category known as "special majority" within parliamentary and legislative procedures. Special majorities come into play for specific circumstances and are delineated by distinct clauses in the law. There are four kinds of special majorities, each linked to different constitutional articles:

1. **"Article 249"** necessitates a special majority.
2. **"Article 368"** also mandates a special majority.
3. **"Article 368"** takes it a step further, demanding both a special majority and the approval of at least 50% of the states through a simple majority vote.

4. **"Article 61"** also calls for a special majority.

These special majorities play a crucial role in certain constitutional matters, and the specific criteria for each type differ based on the respective article in question.

In accordance with Article **61 (Procedure for the impeachment of the President)** of the Constitution, a special majority is stipulated, necessitating the presence of two-thirds of the total members in a house. To elaborate, this translates to 362 members in the Lok Sabha and 164 members in the Rajya Sabha. These distinct majority requirements differ based on the Constitutional article and play a pivotal role in specific legislative procedures.

Amendments by a Simple Majority of Parliament

Amendments by a Simple Majority of Parliament (more than 50% of the member present and voting , also called functional or executive majority) encompass various provisions within the Constitution, including:

- Admission or establishment of new states.
- Formation of new states and modifications to the boundaries, names, or areas of existing states.
- Creation or abolition of legislative councils within states.
- Emoluments, allowances, privileges, and related matters of the president, governors, Speakers, judges, etc., as detailed in the Second Schedule.
- Quorum requirements within Parliament.
- Salaries and allowances for members of Parliament.
- Parliamentary rules of procedure.
- Privileges of Parliament, its members, and its committees.
- The use of the English language in Parliament.
- Determination of the number of puisne judges in the Supreme Court.
- Expanding the jurisdiction of the Supreme Court.
- Official language usage.
- Matters related to citizenship, including acquisition and termination.
- Electoral processes for Parliament and state legislatures.
- Delimitation of constituencies.
- Governance of Union Territories.
- Administration of scheduled areas and scheduled tribes as per the Fifth Schedule.
- Administration of tribal areas under the Sixth Schedule.

Amendments by a Special Majority of Parliament [Article 368(2)]

Special majority amendments require the majority of the total membership of each House, with a majority of two-thirds majority of members present and voting. Each House must pass the bill separately.

The provisions subject to this method of amendment include:

- Fundamental Rights,
- Directive Principles of State Policy, and
- All other provisions not categorized in the first and third groups.

The term "total membership" refers to the complete membership of the House, regardless of vacancies or absent members. While the special majority requirement is typically reserved for the third reading stage of the bill, the rules of the Houses mandate this special majority for all significant stages of the bill.

Amendments by a Special Majority of Parliament and Consent of States(Article 368(2))

Informal Amendment

- **Court Decisions:** Milestone legal judgments like the Kesavananda Bharati case (1973), Minerva Mill case (1980), and Berubari Union case (1960) have brought about substantial modifications to the Constitution.
- **Traditions:** Certain informal norms have been acknowledged as having legal weight and have indirectly impacted Constitutional alterations.

Amendments by a Special Majority of Parliament and Consent of States[Article 368(2)] pertains to provisions within the Constitution linked to the federal structure of the polity. These amendments require a special majority in Parliament and the consent of at least half of the state legislatures via a simple majority.

It is worth noting that if certain states take no action on the bill, it does not impede the process. Once half of the states grant their consent, the formalities are fulfilled. No specific time frame is set for states to provide their consent for the bill.

The provisions amendable under this method encompass:

- The election of the President and the procedure for such elections.
- The scope of executive authority for both the Union and the states.
- Matters concerning the Supreme Court and High courts.
- Allocation of legislative powers between the Union and the states (i.e. amendment of the Seventh Schedule).
- The Goods and Services Tax Council.
- Any of the lists outlined in the Seventh Schedule.
- Representation of states in Parliament.
- Parliament's authority to amend the Constitution and the procedure for doing so, as laid out in Article 368 itself.

GENERAL FEATURES OF THE AMENDING PROCEDURE

The amending process prescribed by our Constitution possesses certain distinctive features when compared to leading Constitutions around the world. This procedure, often classified as "rigid," demands a special majority and, in some instances, a unique amendment process, as opposed to the procedure for ordinary legislation.

However, it's worth noting that the amending procedure is not as intricate or challenging as those found in the USA or other rigid Constitutions.

- **Constitutional Amendment Power Vested in Parliament:** Subject to the special procedure outlined in Article 368, our Constitution entrusts the constituent power to the Parliament. This, of course, requires acting with a special majority. Notably, there is no separate body established solely for amending the Constitution, as is the case in some other Constitutions, such as a Constitutional Convention.
- **Exclusive Role of Union Parliament:** The State Legislatures do not possess the authority to initiate any Bill or proposal for the amendment of the Constitution. The sole method for initiating such a proposal is by introducing a Bill in either House of the Union Parliament.
- **Treatment of Constitution Amendment Bills:** Constitution Amendment Bills, except for the provisions in Article 368, are to be passed by Parliament just like ordinary Bills.
- Constitution Amendment Bills can be introduced either by a minister or by a private member.
- The prior approval of the President is not a prerequisite for the introduction of any Constitution Amendment Bill in Parliament.
- Comparing the requirement for ratification by State Legislatures with the corresponding provisions in the American Constitution, the stance of the Indian Constitution is more lenient. While the American Constitution mandates ratification by no less than three-fourths of the States, our Constitution only necessitates ratification by at least half of them.
- For an ordinary Bill governed by Article 111 (Assent to Bills), once it is passed by both Houses of Parliament and is presented to the President, he has the option to either give his assent or declare that he "withholds assent". In the latter scenario, the Bill cannot become an "Act".

IGNITE YOUR MIND

While the acceptability of a constitution ultimately rests with its citizens, what key factors – political, social, cultural, historical – are crucial for its creation and enduring legitimacy?

- However, the 24th CAA amendment of Article 368 has made it mandatory for the President to grant his assent to a Constitution Amendment Bill when it is presented to him after being passed by the Legislature.

No Joint-Session for Constitution Amending Bills

Article 108 plays a pivotal role in resolving disputes between the two Houses of Parliament when it comes to the passage of a Bill. It allows for the convening of a joint session to break the deadlock.

However, it's important to emphasize that Article 108(1) specifies that the joint session procedure applies exclusively to Bills related to ordinary legislation falling under Chapter 2 of Part V of the Constitution. This provision does not extend to Bills aimed at amending the Constitution. The latter category operates under a self-contained procedure delineated in Article 368(2).

The inclusion of a special majority requirement in both Houses, as outlined in Article 368(2), would have been superfluous if the provision for a joint session were applicable in the realm of constitutional amendments.

While the formality of the President's assent remains in the case of a constitutional amendment, signifying the date when the amendment Bill becomes an integral part of the Constitution.

The President's authority to veto such a Bill has been eliminated by replacing certain words with words "shall give his assent" in clause (2) of the Article 368, as it stands after the Constitution (24th Amendment) Act, 1971.

CONTROVERSY SURROUNDING CONSTITUTION AMENDMENTS AND FUNDAMENTAL RIGHTS

A contentious debate has revolved around whether a **Constitutional Amendment,** carried out according to the procedures defined in **Article 368,** must **adhere** to the stipulations of **Article 13(2)** and be considered a "law" within the framework of Article 13(3).

In simpler terms, it questions whether a Constitution Amendment Act could be invalidated if it attempts to diminish or contradict a Fundamental Right enshrined in Part III of the Constitution.

- **Shankari Prasad vs Union of India (1951):** This legal dispute was initiated to contest the First Constitutional Amendment, which introduced Articles 31A and 31B and Ninth schedule. These additions limited the right to property, a fundamental right at that juncture. The Supreme Court, in its ruling on this case, clarified that the term "law" as mentioned in Article 13 specifically pertained to regular laws enacted by Parliament or State Legislatures and did not encompass Constitutional amendments made under Article 368. Consequently, the judgment established that Parliament, through a Constitutional amendment, holds the authority to modify any part of the Constitution, including the fundamental rights outlined in Part III.
- **Golak Nath vs State of Punjab (1967):**

The majority judgement in Golaknath Case invoked the concept of implied limitations on Parliament's power to amend the Constitution. According to this view the Constitution gives a place of permanence to the fundamental freedoms of the citizen.

- In the "Golak Nath" case, the Constitutional validity of the Seventeenth Amendment Act (1964) ,which inserted certain state acts in the Ninth schedule, was challenged.
- A majority of six judges in a Constitutional bench of eleven judges reversed the earlier judgments. They contended that, even though there was no explicit exception under the scope of Article 368, Fundamental Rights included in Part III of the Constitution could not, due to their inherent nature, be subject to the amendment process outlined in Article 368.
- They asserted that if any of these rights were to be amended, a new Constituent Assembly would need to be convened to create a new Constitution or bring about the changes to it.

The majority in Golak Nath's case rested its conclusion on the view that the power to amend the constitution was also a legislative power conferred by Article 245 by the constitution, so that constitution amendment would also be "law" within the purview of article 13(2).

The Court also introduced **the Doctrine of Prospective Overruling** in this case. If any amendment is struck down retrospectively, it would create chaos and will affect several transactions that were carried out under the old regime However, in the Doctrine of Prospective Overruling, constitutional amendments or laws already in place would not be affected by the decisions of the court and only future amendments or laws would have to follow the judgement laid down by the court in a case. In other words, under the Doctrine of Prospective Overruling the law declared by the Court applies only to future cases, and its applicability to cases that have reached finality is preserved because repeal would otherwise cause hardship to those who had relied on it.

24th Amendment Act 1971

- In response to the *"Golak Nath case"* decision, Parliament sought to override it by amending Article 13 and 368 itself through the Constitution (24th Amendment) Act, 1971. This amendment stipulated that a Constitution Amendment Act, passed in accordance with Article 368, would not be considered "law" within the scope of Article 13. Consequently, the validity of a Constitution Amendment Act would not be subject to judicial review on the grounds that it affects a Fundamental Right .

25th Constitutional amendments Act 1971

- This amendment introduced a new **Article 31C** which contained two provisions:
- No law giving effect to the socialistic Directive Principles specified in Article 39(b) and 39(c) shall be void on the ground of violation of Fundamental Rights under Article 14, Article 19 and Article 31(Right to property).
- No law containing a declaration for giving effect to such policy shall be questioned in any court on the ground that it does not give effect to such a policy (curtailed judicial review of the courts).

Kesavananda Bharati's Case (1973)

- The *Kesavananda Bharati v. State of Kerala* was heard by a full bench of thirteen judges. The majority of the full Court upheld the validity of the 24th Amendment and overruled the *Golak Nath case* and stated that Fundamental Rights can be amended under Article 368. However, the Kesavananda judgment laid down the concept that certain fundamental aspects of the Constitution, often referred to as "Basic Features," are beyond the scope of amendment.
  - These **"Basic Features"** are integral elements of the Indian Constitution that cannot be modified using the amending power granted by Article

368. Therefore, if a Constitution Amendment Act attempts to alter the basic structure or framework of the Constitution, the courts have the authority to invalidate it as ultra vires.

- This means that the term **"amend" in Article 368** encompasses changes that do not involve the fundamental restructuring of the Constitution, akin to creating a new Constitution.
- These essential features, while not exhaustive, include the sovereignty and territorial integrity of India, the federal system, judicial review, and the Parliamentary system of government.

- The Supreme Court upheld the validity of the first provision of the 25th Constitutional Amendment Act but declared the second provision of the Constitution (25th Amendment) Act, 1971, concerning Article 31C, as invalid on the ground that judicial review is a basic feature of the Constitution and can not be taken away.

The majority decision in Kesavananda Bharati ruled that Article 368 did not grant the power to eliminate judicial review under the guise of "amending" the Constitution.

Implications of Kesavananda case: (1) Article 368(1), as amended in 1971, explicitly clarifies that the authority to amend the Constitution, along with the procedure, is exclusively vested in Article 368 itself. It cannot be derived from any other source, such as Article 245. Therefore, any limitations on the amending power must be identified within the confines of Article 368 and should not be based on any theory of implied limitations.

(2) The use of the term 'repeal' in Article 368(1) further underscores that the concept of amendment, as defined by Article 368, encompasses not only modifications but also the removal of any of its provisions, including those considered 'fundamental' or 'essential.'

(3) The Constitution of India does not draw a distinction between an amendment and a 'complete revision,' unlike some other constitutions, like the Swiss Constitution. Consequently, there is no impediment to altering the entire Constitution through the amending power, which is referred to as the 'constituent power' in Article 368(1). As a result, there is no requirement to convene a Constituent Assembly for a comprehensive constitutional revision.

Addressing the Implications of Kesavananda Bharati: The 42nd Amendment Act, 1976

The 42nd Amendment Act in 1976 incorporated two clauses, namely (4) and (5), into Article 368. Clause (5) unequivocally stated that there would be no constraints on the constituent power of Parliament to amend the provisions of the Constitution, and, importantly, it declared that the validity of any Constitution Amendment Act could not be challenged in any court on any grounds (as per Clause (4)).

Also, it extended the scope of the first provision of Article 31C. It stated that no law giving effect to any of the Directive Principles (not just Article 39(b) and 39(c)) can be declared null and void for violating Article 14, Article 19, and Article 31.

In the famous **Minerva Mill case (1980),** the Court struck down clauses (4) and (5) of Article 368. The basis for this decision was that judicial review constitutes a "basic feature" of the Indian Constitutional system, which cannot be eliminated, even through the process of amending the Constitution.

The Court also struck down the extension of Article 31C to other Directive Principles but upheld the validity of the original first provision of the Article 31C.

ARTICLE 368 AS INTERPRETED BY THE SUPREME COURT

In conclusion, it has been established that a Constitution Amendment Act, passed by Parliament, is not considered "law" within the purview of Article 13, as affirmed by the majority in "Kesavananda's" case. The majority also upheld the validity of clause (4) of Article 13 (and a corresponding provision in Article 368(3)), introduced by the Constitution (24th Amendment) Act, 1971, which reads as follows:"Nothing in this article (ie Article 13) shall apply to any amendment made under Article 368".

- **Amendment of any Section of the Constitution through Article 368:** Article 368 outlines the prescribed procedure for amending any part of the Constitution.
- **No Referendum or Constituent Assembly Interpretation Required for Amendments:** Amendments to the Constitution do not necessitate a referendum or a Constituent Assembly interpretation.
- **Preservation of "Basic Features":** It's crucial to note that no provision or portion of the Constitution can be amended if it infringes upon or undermines any of the Constitution's "basic features". This introduces a substantive constraint, apart from the explicit procedural restrictions specified in Article 368. The doctrine of "basic features," established through judicial innovation, safeguards the fundamental values and overarching principles of the Constitution, rendering them beyond the reach of the amending power conferred by **Article 368.** Consequently, Parliament is precluded from amending the Constitution to negate these principles and fundamentally alter the Constitution.

SIGNIFICANT AMENDMENTS

- **First Constitutional Amendment of 1951:**
  - **Empowered the state** to make special provisions for the **advancement of socially and economically backward classes**.
  - Provided for the **saving of laws providing for acquisition of estates**, etc.
  - Introduced the **Ninth Schedule** to protect laws about **land reforms** and other included **laws from being reviewed by courts**.
  - Added **three more reasons to limit free speech, like keeping public order and maintaining good relations with other countries**. These limitations must be fair and can be judged by the law.
  - Stated that if the government takes control of trade or business, it doesn't break the right to do business or trade.
- **Fourth Constitutional Amendment of 1955:**
  - Made the scale of compensation given in lieu of compulsory acquisition of private property beyond the scrutiny of courts.
  - Allowed the government to nationalize any trade
  - Added more laws to a special list (Ninth Schedule).
  - Expanded the scope of Article 31A (which saves certain laws)
- **Seventh Constitutional Amendment of 1956:**
  - The new law got rid of the old way of dividing states into four groups - Part A, Part B, Part C, and Part D. Instead, it created 14 states and 6 union territories.
  - The new law allowed high courts to handle cases in union territories.
  - It said that two or more states could share one high court.
  - The law also made it possible to appoint additional or acting judges in the high court.
- **Eleventh Constitutional Amendment Act of 1961:**
  - The way we choose the Vice-President was changed. Now, instead of both Houses of Parliament meeting together, a special group of people called the **electoral college** decides.
  - It's now a rule that no one can question the election of the President or Vice-President because of any empty seats in the electoral college that chooses them.
- **Sixteenth Constitutional Amendment Act of 1963:**
  - It gave the government the power to make more rules limiting free speech, peaceful gatherings, and forming groups to protect India's unity and safety.
  - It also added promises about preserving India's unity and safety to the oaths that people running for government, lawmakers, ministers, judges, and the Comptroller and Auditor General (CAG) must take.
- **Eighteenth Constitutional Amendment Act of 1966 :**
  - This amendment clarified that the power of Parliament to form a new state also Includes a power to form a new state or union territory by uniting It part of a state or a union territory to another state or union territory.
- **Twenty-Fourth Amendment Act of 1971:**
  - It reiterated the power of Parliament to amend any part of the Constitution, including fundamental rights.
  - Made it mandatory for the president to give his assent to a Constitutional Amendment Bill.
- **Twenty-fifth Constitutional Amendment Act of 1971:**
  - **It curtailed** the fundamental right to property.
  - It also provided that any law made to give effect to the Directive Principle contained in Article 39 (b) or (c) cannot be challenged on the ground of violation of the rights guaranteed **under Article 14, 19 and 31**
- **Thirty-Ninth Constitutional Amendment Act of 1975:**
  - It placed the disputes relating to the President, Vice-President, Prime Minister and Speaker beyond the scope of the judiciary. They are to be decided by such authority as may be determined by the Parliament.
  - The act also included certain Central acts in the Ninth Schedule.
- **Forty Second Amendment Act of 1976 :**
  - It is considered as one of the most contentious changes to the Constitution and was introduced during a time of internal emergency. Due to the extensive and notable alterations it brought about, it has frequently been described as a **'Mini Constitution'**.

Table 8.4: Features of 42nd Amendment Act

Changes	Amendment	Significance
Preamble	Added three new words 'socialist', 'secular', and 'integrity'.	Incorporating these terms offered a more precise definition of the core principles and goals for India's future.
Fundamental Rights and DPSP	**Directive Principles of State Policy (DPSPs)** were **accorded precedence** over **Fundamental Rights.**	Gave the Parliament the authority to make laws that would **improve the execution of Directive Principles of State Policy (DPSPs)**, a significant role in bringing about a **socio-economic revolution aimed at reducing poverty.**

New part IV A	Added 10 Fundamental Duties for Citizens	Duties aimed to **strike a democratic balance** by emphasizing citizens' responsibilities alongside their rights.
New DPSPs	Added new directives into the DPSPs, including Article 39, Article 39A, Article 43 A, and Article 48 A	The directives granted the government the authority to promote all-encompassing development, safeguard the rights of industrial workers, ensure justice for everyone, and address issues related to environmental damage and the loss of biodiversity.
Lok sabha and Assembly	Delimitation of constituencies for Lok Sabha and State Legislative Assembly elections was paused until after the 2001 census.	This emphasizes how crucial it is for governments to pay attention to population control measures, which has been a significant focus for multiple administrations.
Parliament	The President was made bound by the advice of the Cabinet. The Parliament was given unrestrained power to amend any part of the Constitution without judicial review.	This move greatly increased the authority of Parliament, establishing its dominance over the other branches of the government.
Judiciary	The authority of the Supreme Court and High Courts to review and issue writs was limited. Constitutional Amendments became immune to legal challenges. Additionally, the courts lost their ability to decide what qualifies as an "office of profit."	These changes undermine the jurisdiction of the judiciary and limit the scope of **Judicial review.**
Federalism	**Five subjects** were **shifted** from the **State List to the Concurrent List**,.These subjects are ❑ **Education** ❑ Forests ❑ Weights & Measures, ❑ Protection of Wild Animals and Birds, ❑ Administration of Justice. **Additionally**, it **allowed the use of central armed forces** in any state to handle law and order issues.	These changes shifted a significant amount of authority from state governments to the central government, which raised concerns about the federal structure of India being challenged.
Emergency Provisions	This action allowed the declaration of a national emergency in a specific area within India. Additionally, it prolonged the period for which the President's rule could be applied in a state from six months to one year.	These changes **reduced democratic freedoms** and had the **potential to create tensions** between the **central and state governments**. They **also made states more susceptible to potential misuse of Article 356**.

❑ **Forty-Fourth Constitutional Amendment Act of 1978:** The 44th Amendment to the Indian Constitution was brought into effect by the **Janata Party Government after** winning the 1977 general elections.

- **Key Amendments & Importance:**
  - ❒ It reclassified the right to property, moving it from the list of Fundamental Rights to a legal right.
  - ❒ The original 5-year term for the Lok Sabha and state legislative assemblies was reinstated.
  - ❒ Provisions regarding quorum in the Parliament and state legislatures were restored.
- **Significant contributions of the 44th Amendment:**
  - ❒ It restored the balance among the judiciary, executive, and legislative branches, which had been disrupted by the 42nd amendment.
  - ❒ It safeguarded the freedom and liberties of citizens.
  - ❒ It provided protection against the misuse of emergency provisions.

- It re-established democratic and Constitutional values, preventing the possibility of an authoritarian regime.

It is crucial to give special attention to the **42nd, 43rd, and 44th Amendments** due to their profound implications in both the political and legal spheres.

- **Fifty Second Constitutional Amendment Act of 1985:** This amendment tackled the issue of instability caused by elected representatives frequently changing their party affiliations.
  - **Key Amendments & Significance:**
    - The 10th Schedule was added to the Constitution, outlining the process for disqualifying legislators due to defection.
    - The 91st amendment in 2001 reinforced the anti-defection law by removing the exception that previously allowed defection in case of a split.
  - **Significant contributions of the 52nd amendment include:**
    - Strengthening Indian parliamentary democracy by discouraging unethical political defections.
    - Providing stability to the government by preventing frequent changes in party allegiance.
    - Encouraging party discipline and preventing the breach of the people's trust due to defection.

IGNITE YOUR MIND

How can we strike a balance between maintaining the Constitution's core values and ensuring it remains relevant to contemporary challenges, without compromising its stability and sanctity?

- **Sixty First Constitutional Amendment Act of 1989:** It reduced the voting age from 21 to 18 , leading to political empowerment of Youth and widening of the base of democracy.
- **Sixty nine Constitutional Amendment Act of 1991:** It gave special status to Delhi , redesignated the UT's of Delhi as the " National Capital Territory of Delhi ".
- **73rd and 74th Constitutional Amendments, 1992:** These amendments bestowed Constitutional recognition upon Panchayati Raj Institutions (PRIs) and municipalities.
  - Key Amendments & Their Importance
    - The amendments made PRIs part of the enforceable section of the Constitution, making it mandatory for states to implement this system.
    - They shifted the focus from representative democracy to participatory democracy.
    - The noteworthy outcomes of these amendments are as follows:
      - Greater decentralization and heightened community participation in devising and executing programs, leading to enhanced accountability.
      - Enhanced political representation for women, Scheduled Castes (SCs), and Scheduled Tribes (STs).
- **75th Constitutional Amendment Act 1994:** It modified article 323B and established State-level Rent Tribunals. Its regulation and control and tenancy issues include the rights, title, and interest of landlords and tenants.
- **93rd Constitutional Amendment Act 2005:** This law allows the state to create **special provisions** to help people who are socially and educationally disadvantaged, like Scheduled Castes, Scheduled Tribes, and backward classes, get access to education. These rules apply to all educational places, even private ones, that get some help from the government, except for minority educational places.

LATEST CONSTITUTIONAL AMENDMENTS

Some Latest Amendments Include

- **102nd Amendment Act of 2018:**
  - The 102nd Amendment Act of 2018 gave Constitutional validity to the National Commission for Backward Classes (NCBC). The NCBC has the power to:
    - Examine complaints and welfare measures regarding Socially and Educationally Backward Classes (SEBC).
    - Represent and protect SEBC.
    - Define the socially and educationally backward classes for a state or union territory.
    - Recommend welfare measures for SEBC .
    - The 102nd Amendment also:
      - Inserted Article 338B into the Constitution.
      - Empowered the President of India to define the socially and educationally backward classes.
      - Made parliamentary approval obligatory when adding or removing any community from the list of backward classes.
      - Enhanced the regulations to support backward classes in India.
- **103rd Amendment Act of 2019:**
  - The 103rd Amendment of the Indian Constitution came into effect on January 14, 2019. President Ram Nath Kovind gave assent to the bill on January 12, 2019. The 103rd Amendment inserted Articles

15(6) and 16(6) into the Constitution. These articles provide up to 10% reservation to the economically weaker sections (EWS) among non-OBC and non-SC/ST sections of the population.

- The reservation applies to admissions and government jobs, the exception is institutions run by minority groups. A five-judge Supreme Court bench upheld the validity of the 103rd Constitution Amendment by a majority of 3:2.

- **104th Amendment Act of 2020:**
  - The 104th Amendment to the Indian Constitution extended the reservation of seats for the SCs and STs in the Lok Sabha and the State Legislative assemblies for a further period of ten years that upto 2030.
    - It also discontinued the special representation of the Anglo-Indian community in the lok-Sabha and the state legislative assemblies by nomination.
- **105th Amendment Act of 2021:**
  - The 105th Amendment, officially known as The Constitution (One Hundred and Fifth Amendment) Act, 2021, amended Articles 338B, 342A, and 366 of the Constitution. The amendment:
    - Restored the power of state governments and union territories to identify socially and economically backward classes (SEBCs)
    - Clarified that states can maintain the "state list" of OBCs as was the system before the Supreme Court judgment.
- **106th Amendment Act of 2023:**
  - The 106th Amendment Act, 2023 reserves one-third of seats in the following legislative bodies for women for 15 years:
    - Lok Sabha, or House of the People
    - Legislative Assembly of every state
    - Legislative Assembly of the National Capital Territory of Delhi

The amendment also reserves one-third of the total number of seats reserved under Article 330 (2) for women belonging to Scheduled Castes or the Scheduled Tribes.

The amendment was passed by Parliament in September 2023 and received the President's assent. It will come into force on a date appointed by the Central Government by notification in the Official Gazette.

CRITICISM OF THE CONSTITUTIONAL AMENDMENTS

Critics have criticised the amendment procedure of the Constitution on the following grounds:

- **Only Parliament** can suggest changes to the Constitution, except in one case when state legislatures can ask for legislative councils to be created or abolished.
- Most of the Constitution can be changed by Parliament alone, with either a special majority or a simple majority. In a few cases, the consent of state legislatures is needed, but only half of them.
- The Constitution doesn't specify how quickly state legislatures should agree or disagree with an amendment. It also doesn't say if states can change their minds after giving approval.
- There's no way to resolve a deadlock between both houses of Parliament if they can't agree on a Constitutional amendment.
- The process for amending the Constitution is quite similar to making regular laws, except for needing a special majority.
- There is no provision for a special body to change the Constitution, such as a Constitutional Convention (as in the United States) or a Constitutional Assembly.

CONCLUSION

Despite its flaws, it's evident that the process has been straightforward and effective in adapting to changing needs. It, as rightly said by **K.C. Wheare**, 'strikes a good balance between flexibility and rigidity '. According to **Granville Austin**, although it may seem complex, the amending process is one of the well-thought-out aspects of the Constitution.

Basic Structure of the Constitution

9

INTRODUCTION

The Doctrine of Basic Structure has played a pivotal role in shaping the **constitutional jurisprudence** in India. It emerged through the judicial interpretation which stated that certain aspects of the Indian Constitution are beyond Parliament's amending power. It was established as a key principle by the Supreme Court of India and has since had a profound impact on the country's legal and political landscape. While the term "Basic Structure" is not mentioned in the Constitution, it gained recognition in the 1973 Kesavananda Bharati case for the first time.

EMERGENCE OF THE BASIC STRUCTURE

- **Shankari Prasad Case (1951):**
  - **Challenge to First Amendment Act (1951):** The Supreme Court ruled that the power of Parliament to amend the Constitution under **Article 368** includes the power to amend Fundamental Rights. The term **'law' in Article 13** encompasses only ordinary laws, not constitutional amendment acts (constituent laws). Therefore, the Parliament can abridge or take away any Fundamental Right by enacting a constitutional amendment act, and such a law will not be void under Article 13.
- **Sajjan Singh Case (1964):**
  - **Re-Affirmation of Previous Stand:** In the Sajjan Singh case (1964), the Supreme Court reaffirmed its previous position that a constitutional amendment act made under Article 368 is not a law within the meaning of Article 13. Fundamental Rights can be amended through such acts.
- **Golak Nath Case (1967):**
  - **Reversal of Previous Stand:** In the Golak Nath case (1967), the Supreme Court reversed its earlier stand. It ruled that Fundamental Rights have a 'transcendental and immutable' position, and therefore, the Parliament cannot abridge or take away any of these rights. A constitutional amendment act is also considered a law within the meaning of Article 13 and could be void for violating Fundamental Rights.
- **Parliament's Reaction: 24th Amendment Act (1971):**
  - In response to the Golak Nath case (1967), Parliament enacted the 24th Amendment Act (1971), amending **Articles 13 and 368.** It declared that Parliament has the power to abridge or take away Fundamental Rights under **Article 368,** and such an act will not be considered a law within the meaning of **Article 13.**
- **Kesavananda Bharati Case (1973):**
  - **Reversal of Golak Nath Judgment:** In the Kesavananda Bharati case (1973), the Supreme Court overruled its decision in the Golak Nath case. It upheld the validity of the 24th Amendment Act (1971) and stated that Parliament is empowered to abridge or take away Fundamental Rights. However, the court introduced the doctrine of the **'Basic Structure',** which limits Parliament's amending power. Parliament cannot abridge or take away a Fundamental Right that forms a part of the 'Basic Structure' of the Constitution.
- **Indira Nehru Gandhi Case (1975):**
  - **Application of 'Basic Structure':** In the Indira **Nehru Gandhi case (1975),** the Supreme Court invalidated a provision of the 39th Amendment Act (1975) that kept election disputes involving the Prime Minister and the Speaker of Lok Sabha outside the jurisdiction of all courts. The court held that this provision was beyond Parliament's amending power as it affected the **Basic Structure** of the Constitution.
- **42nd Amendment Act (1976):**
  - **Parliament's Response:** Parliament reacted to the doctrine of 'Basic Structure' by enacting the 42nd Amendment Act (1976), which declared that there is no limitation on the constituent power of Parliament, and no amendment can be questioned in any court on any ground, including contravening Fundamental Rights.
- **Minerva Mills Case (1980):**
  - The Supreme Court invalidated the provision of the 42nd Amendment Act (1976) that excluded judicial review, which is considered a 'basic feature' of the Constitution. The court reiterated that Parliament's amending power is limited, and it cannot expand that power into an absolute one. The 'Basic Structure' doctrine remains in place, and Parliament cannot alter the 'Basic Structure' of the Constitution.

ELEMENTS OF THE BASIC STRUCTURE

The elements of the Basic Structure have not been explicitly enumerated in the Constitution itself, but they have been identified through various judicial pronouncements. These elements represent the core principles and values that are considered fundamental and unalterable.

Some of the Key Elements Include

- **Supremacy of the Constitution:** The Constitution is the supreme law of the land, and all laws, including constitutional amendments, must conform to it. This principle ensures that the Constitution remains the ultimate source of authority.
- **Democracy:** The democratic principles, including free and fair elections and the right to equality, are integral components of the Basic Structure. These ensure that India remains a democratic republic.
- **Secularism:** The Preamble of the Constitution declares India as a secular state. In **S.R. Bommai case (1994)**, SC termed secularism as part of Basic Structure.
- **Federalism:** The distribution of powers between the central and state governments, as enshrined in the Constitution, is considered an essential feature of the Basic Structure. It preserves the federal nature of the Indian polity.
- **Judicial Review:** The power of the judiciary to review laws and executive actions to ensure they are in line with the Constitution is a crucial element. It safeguards the rights and liberties of citizens.
- **Essence of Fundamental Rights:** The protection of Fundamental Rights, such as the right to equality, freedom of speech, and personal liberty, is an integral part of the Basic Structure. These rights are considered sacrosanct.
- **Rule of Law:** The principle that all individuals, including the government, are subject to the law is a fundamental element. It ensures that the government acts within the boundaries of the Constitution.
- **Separation of Powers:** The division of powers between the three branches of government (legislature, executive, and judiciary) is a fundamental feature that prevents the concentration of power.
- **Unity and Integrity of the Nation:** The commitment to preserve the unity and integrity of the country is considered part of the Basic Structure. It upholds the territorial integrity of India.
- **Parliamentary System:** The democratic Parliamentary System of government, with checks and balances, is considered an essential element. It ensures responsible and accountable governance.

What is Judicial Review?

- In India, judicial review refers to the power of the judiciary to review the actions of the legislative and executive branches of the government. This power allows the courts to determine the constitutionality of laws, executive orders, and government actions.
- The Indian Constitution grants this authority to the judiciary under Articles 13, 32, and 226. Article 13 declares that any law that is inconsistent with or in derogation of the Fundamental Rights shall be void.
- Articles 32 and 226 empower the Supreme Court and High Courts, respectively, to issue writs for the enforcement of fundamental rights.
- Through judicial review, the courts can strike down laws or governmental actions that are found to be in violation of the Constitution.
- This serves as a crucial check and balance mechanism, ensuring that the government operates within the limits of the Constitution and upholds fundamental rights and principles.

SIGNIFICANCE OF BASIC STRUCTURE

- **Enhancing Separation of Powers:** By emphasizing a true separation of powers, the Basic Structure doctrine ensures the independence of the judiciary from the other branches of government, reinforcing the democratic framework.
- **Striking a Balance: Granville Austin c**ontends that the Basic Structure Doctrine achieves a balance between the responsibilities of Parliament and the Supreme Court, thereby safeguarding the intricate framework of the Indian Constitution.
- **Preserving Constitutional Ideals:** The Basic Structure doctrine aims to safeguard constitutional principles and the fundamental ideals envisioned by the framers of the Constitution.
- **Safeguarding Fundamental Rights:** One of the pivotal roles of the Basic Structure doctrine is to shield the fundamental rights of citizens, offering protection against legislative arbitrariness and authoritarianism.
- **Dynamic Constitution:** Recognizing the dynamic nature of the Constitution, the Basic Structure doctrine allows for progress and adaptability over time, transforming the Constitution into a living document**.**
- **Defending Federalism:** The doctrine has been used to protect the federal structure of the Indian Constitution. It ensures that the division of powers between the central and state governments remains intact.

KEY ISSUES SURROUNDING THE BASIC STRUCTURE DOCTRINE

- **No constitutional basis:** The Constitution as a whole is a basic law and the Basic Structure provision is an attempt to locate something even more basic than that. This line of thought was not there in the constituent assembly. The constituent assembly had never notified that some features were more important than others.
- **Scope of the Basic Structure:** One of the primary debate centers around what constitutes the "Basic Structure" of the Indian Constitution. While certain principles like democracy, secularism, and the rule of law are widely accepted as part of the Basic Structure, there is ongoing discussion about whether specific policies or provisions, such as reservation policies, fall within this framework.
- **Constituent Power of Parliament vs. Judicial Review:** There is an ongoing debate about the balance of power between the judiciary and the legislature. Critics of the doctrine have called it undemocratic since unelected judges can strike down a constitutional amendment. At the same time, its proponents have hailed the concept as a safety valve against majoritarianism and authoritarianism.
- **Role of the Judiciary:** Some critics question the extent to which the judiciary should have the authority to decide what constitutes the Basic Structure. There are debates about whether the judiciary is overreaching and acting as a **"super-legislature",** the **Third chamber** of the **"Parliament".**
- **Decision to include or exclude features based on subjective assessment:** The power to decide the inclusion of subjects in the Basic Structure lies with the apex court bench and the judges on it. Hence, any subject's inclusion or non-inclusion is based on a subjective assessment of the individual judge, which can vary from person to person and even time.

IGNITE YOUR MIND

Imagine you are a constitutional expert. How would you explain the Basic Structure doctrine to someone who has never heard of it before? Also, name some elements of the Basic Structure doctrine and explain why these elements are considered fundamental and unalterable in the Indian Constitution.

These issues reflect the complex and evolving nature of constitutional law and governance in India. Public discourse, judicial decisions, and academic scholars continue to shape the understanding and application of the Basic Structure doctrine.

IMPORTANT CASES RELATED TO THE BASIC STRUCTURE OF THE INDIAN CONSTITUTION

Case	Features
Golaknath v. State of Punjab, 1967	❑ Initially laid the groundwork for the Basic Structure doctrine by asserting limitations on Parliament's power to amend fundamental rights.
Kesavananda Bharati v. State of Kerala, 1973	❑ The landmark case that introduced the concept of the Basic Structure doctrine. ❑ Held that there are certain core features of the Indian Constitution that cannot be amended by Parliament. ❑ Judicial review was upheld as a means to protect the Basic Structure. ❑ The case established that the amending power of the Indian Parliament is not unlimited.
Indira Gandhi v. Raj Narain,1975	❑ Upheld the Basic Structure doctrine. ❑ Equality of status and opportunity of an Individual. ❑ Free and fair elections which are implied in democracy.
Minerva Mills Ltd. v. Union of India, 1980	❑ Focused on the balance of power between the judiciary and the legislature regarding constitutional amendments. ❑ The court ruled that the Basic Structure doctrine is a limitation on the amending power of Parliament. ❑ Also emphasized the importance of judicial review as a means to protect the Basic Structure. ❑ Harmony and balance between fundamental rights and directive principles.
Waman Rao v. Union of India, 1981	❑ Clarified that judicial review can be used to determine whether a constitutional amendment violates the Basic Structure. ❑ All the laws kept in the Ninth schedule after the date of Kesavananda Bharati judgment are also open to judicial review.

S.R. Bommai v. Union of India,1994	❑ While not a Basic Structure case, it addressed the issue of the President's Rule and its impact on federalism. ❑ The judgment emphasized that **federalism** forms part of the Basic Structure and the need for judicial review in cases of misuse of **Article 356.**
L. Chandra Kumar v. Union of India, 1997	❑ Reiterated the **independence of the judiciary** as an integral part of the Basic Structure.
I.R. Coelho v. State of Tamil Nadu,2007	❑ Reiterated the supremacy of the Basic Structure doctrine in preserving the Constitution's core values. ❑ Emphasized that the Basic Structure doctrine applies to all amendments, including those affecting federalism. ❑ Ruled that constitutional amendments are subject to judicial review.
Madras Bar Association Case(2014)	❑ Addressed the **National Tax Tribunal Act,** questioning its constitutionality. ❑ The Supreme Court ruled that the Act, in its original form, compromised the independence of the judiciary, a critical component of the Basic Structure.
Justice K.S. Puttaswamy (Retd.) v. Union of India (Aadhaar Case) 2017	❑ Recognized the right to privacy as a fundamental right, affirming it as part of the Basic Structure of the Constitution. ❑ It upheld the validity of Aadhaar but struck down certain provisions.
Navtej Singh Johar v. Union of India, 2018	❑ Decriminalized consensual homosexual activities among adults by reading down **Section 377 of the Indian Penal Code.** ❑ Emphasized the right to equality and freedom of expression as part of the Basic Structure.
Puttaswamy v. Union of India (I) (Privacy), 2017	❑ Clarified aspects of the right to privacy as an integral part of the Constitution's Basic Structure. ❑ Addressed issues related to government surveillance and data protection.

CONCLUSION

The Basic Structure of the Indian Constitution, which is integral to the constitutional jurisprudence, evolved with various judicial pronouncements to limit the Parliament's power to amend the Constitution. Various constitutional thinkers have emphasized the crucial role of this doctrine in preserving the liberal democracy in India. This doctrine provides a mechanism for preserving the fundamental principles and values of the Constitution, ensuring its continuity and stability while allowing for necessary changes within its established framework.

Fundamental Rights

10

INTRODUCTION

Rights

Rights are defined as entitlements or permissions recognized by a legal system social norms, or ethical principles. These rights safeguard individual freedoms and interests, enabling action or inaction as per one's judgment. Rights encompass various categories like civil, political, economic, social, and cultural, addressing diverse aspects of human and social life. They balance individual liberties with the broader societal welfare , and are fundamental for any democratic system.

According to **Thomas Hobbes**, *"Rights are what we may expect from others and others from us, and all genuine rights are conditions of social welfare. Thus, the rights anyone may claim are partly those that are necessary for the fulfillment of the function that society expects from him. They are conditioned by, correlative to, his social responsibilities."* Rights are **not absolute** in character. The welfare of the individuals as members of a society lies in a compromise between their rights as individuals and the interests of the society to which they belong.

Rights establish the relationship between the State and the individual. The concept of individual rights emerged in modern times, beginning in **Europe** during the 15th and 16th century. Rights give protection against **state absolutism.** It comes from the idea that people are inherently provided with certain **unalienable rights** by their creator reflecting the intrinsic nature of rights.

Relationship Between Rights and Claims

Rights are indeed claims, but every claim is not a right. A claim is not a right if it is not recognised; it is not a right if it is not enforced. Claims which are not recognised are empty claims; claims not enforced are powerless claims. Claims become rights when they are recognised by society.

Difference Between Rights and Privileges

- Rights are our claims on others as are others' claims on us; privileges on the other hand are entitlements granted to some and denied to others.
- Rights are universal in the sense that they are assured to all; privileges are not universal because they are possessed by few.
- Rights are given to all without any discrimination; discrimination is inherent in privileges. Rights are obtained as a matter of right; privileges as a matter of patronage.

Rights reflect a particular stage of the development of society. As the Society changes, so do the character and content of rights.

Theory of Natural Rights

IGNITE YOUR MIND

If, as Gandhi believed, "the very right to live accrues to us only when we do the duty of citizenship of the world," how can we reconcile the seemingly inherent tension between individual rights and collective duties in today's globalized society?

- The theory of natural rights has been advocated mainly by Thomas Hobbes, John Locke and J.J. Rousseau. These scholars provided the **social contract theory** and held the view that there were **natural rights** possessed by men in the state of nature (where no State or government existed) and that these rights were attributed to individuals as if they were the essential properties of men as men. They declared that the rights are inalienable and indefeasible.
- The theory of natural rights is criticized on many grounds. Rights cannot be natural simply because they were the possessions of men in the state of nature. Rights presuppose the existence of some authority to protect them.

Types of Rights

Civil Rights
These rights protect individuals' freedom from infringement by governments, social organizations, and private individuals. They ensure one's ability to participate in the civil and political life of the society and state without discrimination or repression.

Women's Rights
Specific categories of rights rights that apply to particular groups, often to address historical inequalities or vulnerabilities faced by these groups.

Political Rights
These involve participation in the political process, including the right to vote, right to contest elections, the right to hold public office, and the right to petition the government.

These categories are not mutually exclusive and often overlap in practice. The recognition and enforcement of these rights can vary significantly based on the legal, cultural, and political context.

Collective Rights
Rights held by a group rather than by an individual, such as the rights of indigenous peoples, the right to self- determination, and the rights of minority groups

Economic, Social, and Cultural Rights
These are socio-economic human rights, such as the right to education, the right to housing, the right to adequate standard of living, and the right to health.

Human Rights
These are universal rights that apply to all humans equally, regardless of nationality, place of residence, sex, national or ethnic origin, color, religion, language, or any other status.

Fig. 10.1: Types of Rights

FUNDAMENTAL RIGHTS IN THE INDIAN CONTEXT

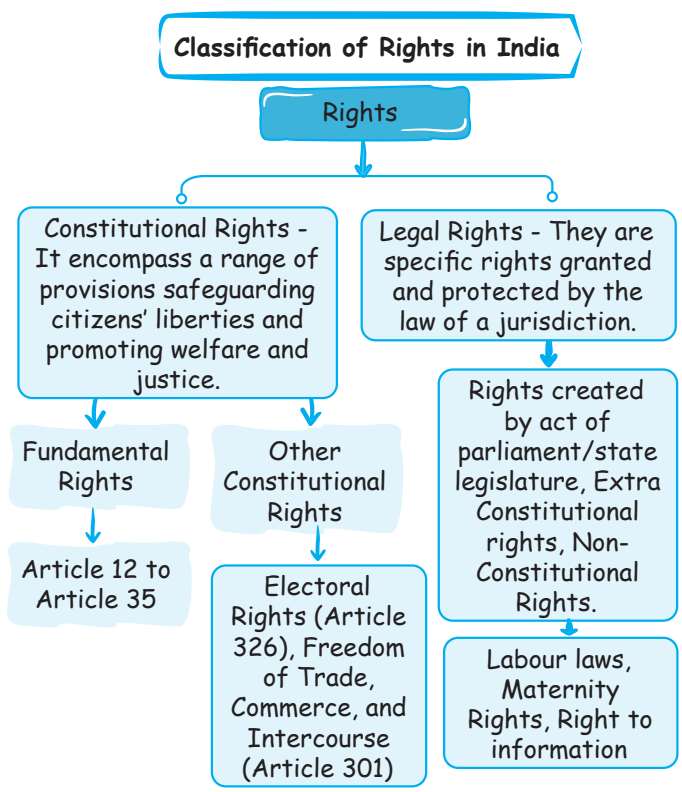

Classification of Rights in India
Rights
Constitutional Rights - It encompass a range of provisions safeguarding citizens' liberties and promoting welfare and justice.
Legal Rights - They are specific rights granted and protected by the law of a jurisdiction.
Fundamental Rights
Other Constitutional Rights
Rights created by act of parliament/state legislature, Extra Constitutional rights, Non-Constitutional Rights.
Article 12 to Article 35
Electoral Rights (Article 326), Freedom of Trade, Commerce, and Intercourse (Article 301)
Labour laws, Maternity Rights, Right to information

Fig. 10.2: Classification of Rights in India

Fundamental Rights are enshrined in **Part III** of the Indian Constitution from **Article 12 to 35.** These rights are known as **'fundamental'** because they are guaranteed and protected by the Constitution, which is the fundamental law of the land and they are essential for the all-round development of the society.

These rights are the result of evolution but the framers of the Constitution got their inspiration from the Constitution of the **USA (i.e., Bill of Rights).** Part III of the constitution is described as the **Magna Carta** of India. The Constitution guarantees Fundamental Rights to all individuals without discrimination, emphasizing equality, individual dignity, the greater public good, and national unity.

The Fundamental Rights serve to advance the concept of **political democracy** by acting as constraints on executive tyranny and arbitrary legislation, ultimately striving to establish a government based on laws rather than individuals.

Originally, the Constitution provided 7 Fundamental Rights:

1. Right to Equality (Article 14-18)
2. Right to Freedom (Article 19-22)
3. Right against Exploitation (Article 23-24)
4. Right to freedom of Religion (Article 25-28)
5. Cultural and Educational Rights (Article 29-30)
6. Right to Property (Article 31) **(deleted)**
7. Right to Constitutional Remedies (Article 32)

The **44th Amendment Act, 1978,** removed the right to property from the list of Fundamental Rights. It has been reclassified as a **Legal** and **Constitutional right** under **Article 300-A in Part XII** of the Constitution. Consequently, the current count of Fundamental Rights is **six.**

Evolution of Fundamental Rights in India

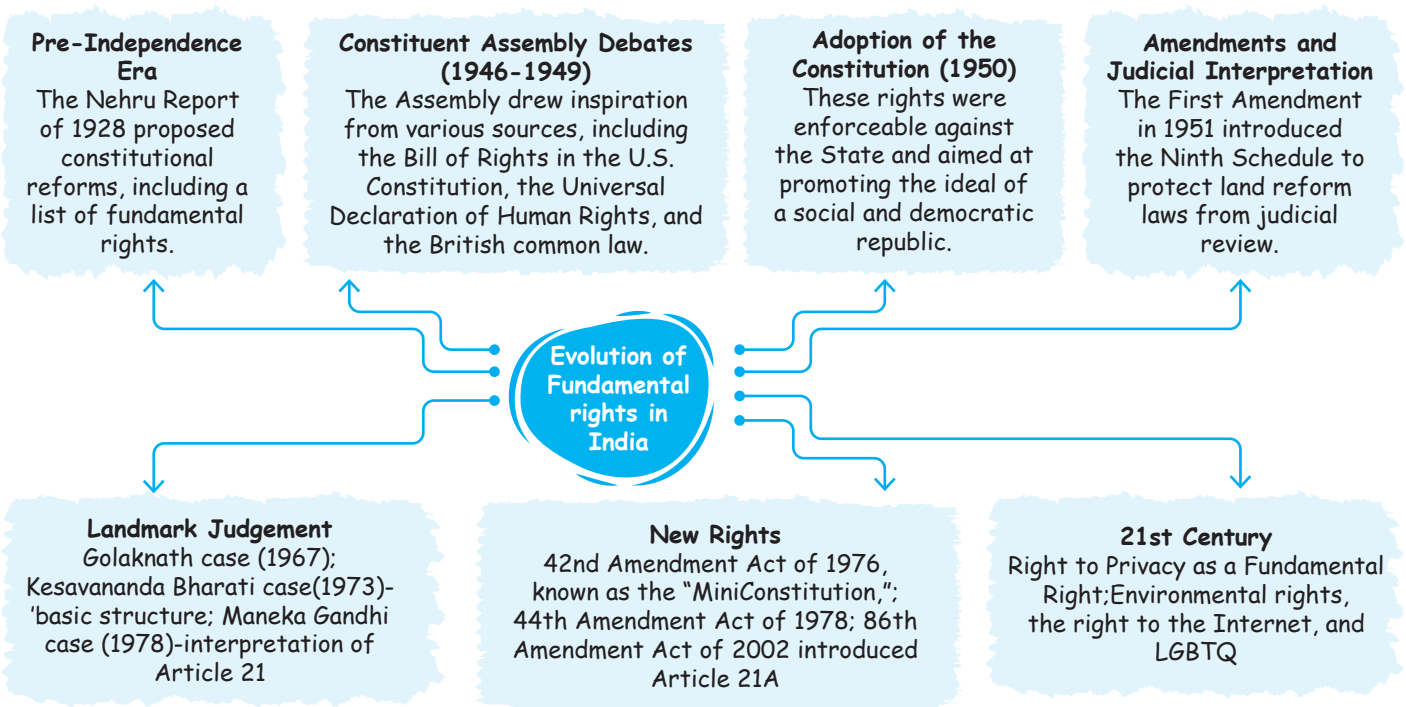

Pre-Independence Era
The Nehru Report of 1928 proposed constitutional reforms, including a list of fundamental rights.
Constituent Assembly Debates (1946-1949)
The Assembly drew inspiration from various sources, including the Bill of Rights in the U.S. Constitution, the Universal Declaration of Human Rights, and the British common law.
Adoption of the Constitution (1950)
These rights were enforceable against the State and aimed at promoting the ideal of a social and democratic republic.
Amendments and Judicial Interpretation
The First Amendment in 1951 introduced the Ninth Schedule to protect land reform laws from judicial review.
Evolution of Fundamental rights in India
Landmark Judgement
Golaknath case (1967); Kesavananda Bharati case(1973)-'basic structure; Maneka Gandhi case (1978)-interpretation of Article 21
New Rights
42nd Amendment Act of 1976, known as the "MiniConstitution,"; 44th Amendment Act of 1978; 86th Amendment Act of 2002 introduced Article 21A
21st Century
Right to Privacy as a Fundamental Right;Environmental rights, the right to the Internet, and LGBTQ

Fig. 10.4: Evolution of Fundamental Rights in India

Philosophical dimension of Part III

The philosophy behind India's Fundamental Rights in Part III is rooted in the vision of a just society, echoing Enlightenment principles which highlight the individual rights against State and societal oppression. Influenced by social contract theory, these rights establish a moral framework for governance, integrating Western ideals of liberty with Indian values like **Dharma** and **Vasudhaiva Kutumbakam (the World is one Family).**

Features of the Fundamental Rights

- **Integral Part of the Constitution-**Fundamental rights are an essential part of the Constitution. They cannot be altered or taken away by ordinary legislation. Any regulation passed by any law-making body in the country can be declared null and void if it violates the fundamental rights guaranteed by the Constitution.
- **Detailed and Comprehensive-** The fundamental rights enshrined in Part III of the Indian Constitution are comprehensive and detailed, covering a broad spectrum of individual liberties ranging from the right to equality, freedom of speech, and protection against discrimination to safeguards against arbitrary arrest and detention.
- **Restrictions on Fundamental Rights-** Fundamental rights are not absolute but qualified, they are subjected to reasonable restrictions provided in the Constitution.
- **Functional Constraints:** The functioning of these rights is constrained by **Article 31A,** (which preserves laws pertaining to the acquisition of estates), **Article 31B** (validating specific acts and regulations in the **9th Schedule),** and **Article 31C** (safeguarding laws that implement certain directive principles).
- **Positive and Negative Rights-** Fundamental Rights are broadly categorized into two - negative and positive.
  - **Positive rights** are those that give privileges to the citizens like the Right to Freedom (Article 19), Right to Life and Liberty (Article 21), etc.
  - **Negative rights** are those that impose certain restrictions on the State like the Right to Equality (Article 14).
- **Fundamental Rights to citizens and non-citizens-** Some Fundamental Rights are available only to the citizens like Articles 15, 16, 19, 29, and 30, while others are available to all persons whether citizens, foreigners or legal persons like corporations or companies. No fundamental right is available to enemy aliens.
- **Against arbitrary action-** All of the Fundamental Rights are available against the arbitrary action of the State, and some of them are also available against the action of **private individuals.**
  - Rights addressing issues like the prohibition of untouchability, prevention of forced labour, and prohibition of human trafficking are explicitly applicable not only against the state but also extend to protection against infringement by other individuals.

- **Justiciable in Nature-** These rights are justiciable, which means that in case of any violation of these rights, the affected individual can move to the court of law, namely the Supreme Court **(Article 32)** and the High Court **(Article 226)** for the protection and enforcement of the rights.
- **Defendor and Guarantor-** Fundamental Rights are defended and guaranteed by the Supreme Court.
- **Amendable in Nature-** The fundamental rights are amendable in nature, meaning rights which are not in sync with the aspirations of the society can be amended or abrogated. It means that they are not sacrosanct or permanent.
  - In the **Kesavananda Bharati case,** the Supreme Court ruled that the fundamental rights can be amended under **Article 368** but subjected to the condition that its **"basic structure"** cannot be changed.
- **Suspension during Emergency:** During a National Emergency, all rights, except those protected by **Articles 20 and 21,** can be suspended. Additionally, the suspension of the six rights outlined in **Article 19** is contingent on a declaration of emergency due to war or external aggression (external emergency), not armed rebellion (internal emergency).
- **Restrictions on Application related to Armed Forces:** The Parliament, under **Article 33,** has the authority to limit or eliminate the application of Fundamental Rights to members of armed forces, paramilitary forces, police forces, intelligence agencies, and similar services.
- **Restrictions during Martial Law:** While martial law is in effect in a specific area, the application of Fundamental Rights can be restricted. Martial law denotes military rule **(Article 34)** imposed in abnormal circumstances to restore order and is distinct from the declaration of a national emergency.
- **Enforceability Mechanisms:** Fundamental Rights are primarily self-executory, meaning they are directly enforceable. However, for a few rights, enforcement is contingent on legislation enacted by the **Parliament,** ensuring uniformity throughout the country **(Article 35).** State legislatures lack the authority to enact such laws.

Significance of Fundamental Rights

- **Adapt to changing needs:** The ability of courts to interpret the scope and application of fundamental rights to evolve and remain relevant amid socio-economic and technological changes.
- **Uphold individual dignity:** They are crucial for safeguarding the individual dignity against state and societal interference, ensuring that every person is treated with respect and dignity.
- **Protect individual Liberties:** The fundamental rights provide a protective shield for individual liberties, ensuring freedom of speech, movement, association, and conscience which are essential for personal development and expression.
- **Ensure equality:** These rights aim to create an egalitarian society by prohibiting discrimination on various grounds. Thus promoting fairness and social justice.
- **Check on state power:** Fundamental rights act as a check on the powers of the government preventing any kind of despotic rule and ensuring that government actions are fair and lawful.
- **Foster democracy:** They are essential for the functioning of a democratic system. Allowing for the expression of diverse opinions, peaceful assembly, and active political engagement.
- **Promote social progress:** Rights against exploitation and cultural and educational rights help in promoting social and economic development and progress paving the way for a more inclusive society.
- **Judicial enforcement:** The inclusion of the right to constitutional remedies empowers citizens to approach the judiciary if their rights are violated. Thus, enforcing the rule of law.

Meaning of 'State' in Article 12

The term States can be defined as "A community of persons permanently occupying a definite territory independent of external control and possessing an organized government".

The term 'State' has been used in various provisions concerning fundamental rights. Article 12 in Part III of the Constitution of India says: 'In this part, unless the context otherwise requires, "the State" includes the Government and Parliament of India, the Government and the Legislature of the States, all local or other authorities within the territory of India or under the control of the Government of India'.

Some Examples of 'State'

- All the **legislative bodies-** The Lok Sabha, Rajya Sabha, Vidhan Sabha, and the Vidhan Parishad,
- All the **executive bodies-** The President, Prime Minister, Vice President, Union Council of Ministers, Governors and the respective Chief Ministers, Bureaucrats, Police, etc.
- All the **local authorities-** The municipality, Panchayats, District Boards, Notified Area Committees etc.
- All the other **statutory and non-statutory** government agencies- CBI, ED, CIC etc.
- All the **agencies outside the territory** of India- Embassy of India, ONGC Videsh etc.

Laws Inconsistent with Fundamental Rights: Article 13

Article 13 explicitly states that any and all laws, in contravention of any of the fundamental rights, shall be null and void. It implicitly establishes the principle of judicial review, granting the Supreme Court (under Article 32) and the High Courts (under Article 226) the authority to invalidate any law found to be in violation of the Fundamental Rights.

Note:

- According to the **Supreme Court,** any **private body** which works as an agency of the State may fall under the ambit of ''State''. Thus, the State has been defined in a broader sense as it includes all the agencies that can be challenged in the court of law in case of violation of the fundamental right.

The word **'law'** in **Article 13** is broadly interpreted to include the following:

- Permanent laws passed by the Parliament or the state legislative bodies.
- Temporary laws such as ordinances promulgated by the President or the state Governors.
- Statutory instruments in the nature of **delegated legislation** (executive legislation) like order, by-law, rule, regulation, or notification.
- Non-legislative sources of law such as traditional practices or customs or usage having the force of law.

Therefore, not just legislation but any of the aforementioned legal instruments can be challenged in the courts on the grounds of infringing a Fundamental Right and, as a result, can be declared as void.

Article 13 Laws Inconsistent With or In Derogation of The Fundamental Rights

The primary purpose of Article 13 is to ensure the supremacy of the Constitution concerning the protection of Fundamental Rights.

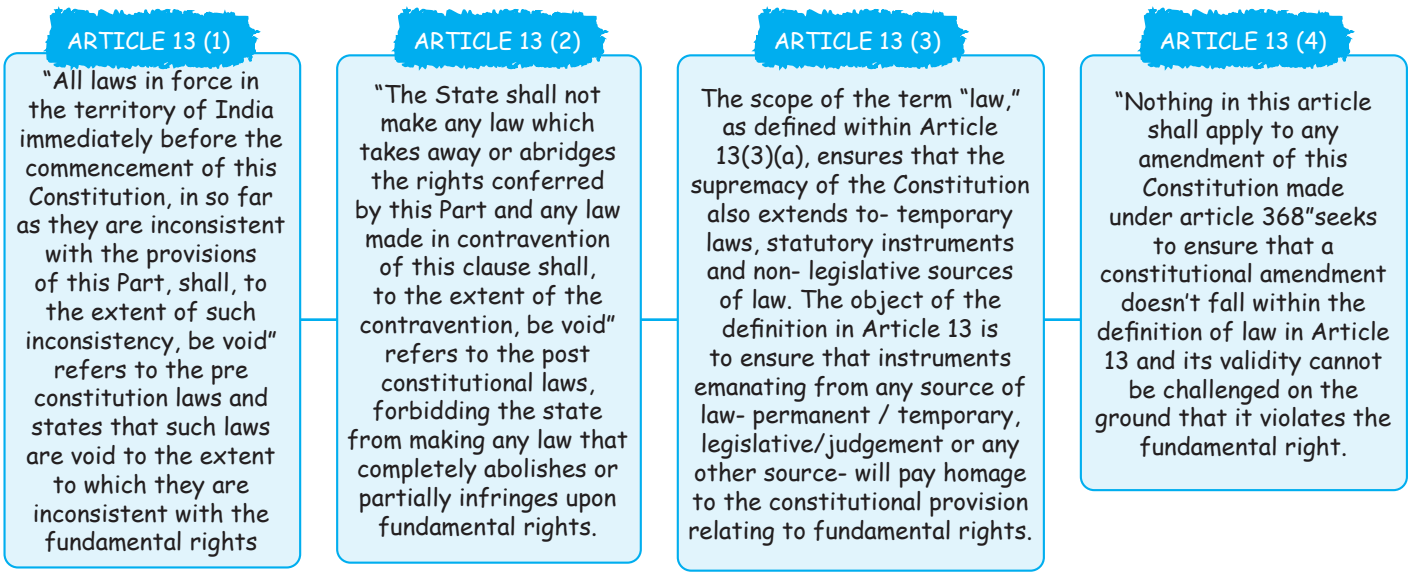

ARTICLE 13 (1)
"All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void" refers to the pre constitution laws and states that such laws are void to the extent to which they are inconsistent with the fundamental rights
ARTICLE 13 (2)
"The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void" refers to the post constitutional laws, forbidding the state from making any law that completely abolishes or partially infringes upon fundamental rights.
ARTICLE 13 (3)
The scope of the term "law," as defined within Article 13(3)(a), ensures that the supremacy of the Constitution also extends to- temporary laws, statutory instruments and non- legislative sources of law. The object of the definition in Article 13 is to ensure that instruments emanating from any source of law- permanent / temporary, legislative/judgement or any other source- will pay homage to the constitutional provision relating to fundamental rights.
ARTICLE 13 (4)
"Nothing in this article shall apply to any amendment of this Constitution made under article 368"seeks to ensure that a constitutional amendment doesn't fall within the definition of law in Article 13 and its validity cannot be challenged on the ground that it violates the fundamental right.

Fig. 10.5: Article 13 of the Constitution of India

Article 13 states that a constitutional amendment does not constitute a 'law' and hence cannot be challenged. However, the Supreme Court established in the **Kesavananda Bharati Case (1973)** that a constitutional amendment can be subject to being challenged if it infringes upon a fundamental right that is integral to the **Constitution's 'Basic structure'.** Thus, it can also be declared null and void.

RIGHT TO EQUALITY: ARTICLE 14 TO ARTICLE 18

Article 14: ' The State shall not deny to any person equality before law or the equal protection of laws within the territory of India'

This provision confers the right to equality on all persons whether citizens or foreigners. Moreover, the **term 'person' also includes legal persons** which include, statutory corporations, companies or registered societies, etc.

Equality Before Law	Equal Protection of Law
❑ This is an English Common Law concept and is considered to be a **negative concept** because it implies the absence of any special privileges or discriminatory treatment of people.	❑ This phrase comes from the American Constitution's Fourteenth Amendment and is considered a more **positive concept** as it aims to ensure that individuals are not only treated equally under the law but are also protected and supported in the enjoyment of their rights and opportunities.
❑ This entails the: ❑ Lack of specific privileges for any individual, ❑ Equal subjection of all individuals to the regular laws administered by standard courts, and ❑ No person, regardless of wealth, social status, or official capacity, is above the law. It means that every person, from the Prime Minister to a common citizen, stands equal before the law.	❑ This entails the: ❑ Equal treatment under identical circumstances, encom-passing both the privileges granted and liabilities imposed by laws, ❑ Similar application of the same laws to individuals in similar situations, and ❑ The principle that individuals in comparable circumstances should be treated similarly, without discrimination.
❑ It is associated with the **rule of law** and means that the law is supreme, and no person, regardless of their position or status, is above the law.	❑ It emphasizes **affirmative action** to bring about de facto equality among all sections of society. This may involve treating groups differently to achieve a condition where they are equal to others.

In practice, in the Indian context, both principles aim to ensure that no person or class of persons is discriminated against and that all are treated equally by the legal system.

Legislation that confers on the executive or administrative authority an unguided and uncontrolled discretionary power in the matter of application of law violates Article 14.

The **Supreme Court** ruled that Article 14 doesn't apply when equals and unequal are treated differently. While it prohibits **class legislation,** Article 14 allows for reasonable classification of individuals, objects, and transactions by the law. However, such classification must not be arbitrary, artificial, or evasive but should be founded on a clear and significant distinction.

Exceptions of Article 14

- **Article 361 (Protection of the President and the Governor):** They have **special privileges** while performing their official duties, hence they are **not answerable to the court of law**.They enjoy the following immunities:
  - **No criminal proceeding** shall be instituted or continued against the President or the Governor in any court of law during his term of office.
  - **No process for arrest or imprisonment** of the President or the Governor shall be issued from any court during their term.
  - **No civil proceeding** shall be instituted against the President or Governor during his term of office in any court of law in respect of any act done by him personally whether before or after he entered upon his office, until the expiration of two months next after notice has been delivered to the President or the Governor.
- **Article 105 (Powers, privileges, etc, of the members of the Parliament):** This article gives freedom of speech to the MPs in their respective Houses and immunity against any civil or criminal proceedings related to any of these actions.
- **Article 194 (Powers, privileges, etc, of the members of the state Legislature):** This article gives freedom of speech to the MLAs in their respective Houses and immunity against any civil or criminal proceedings on any of these actions.
- **Article 31-C (Saves the laws that give effect to certain Directive Principles):** It provides that the laws made by the state for implementing the Directive Principles stated in clause(b) or clause(c) of Article 39 cannot be challenged on the ground of violation of Article 14. The Supreme Court stated that **"where Article 31-C comes in, Article 14 goes out".**
- **Diplomatic Immunity:** Diplomatic Immunity is an exception to Article 14 as it provides immunity to foreign sovereigns (rulers), ambassadors, and diplomats from any civil or criminal proceeding within the territory of India. They are treated/proceeded/tried before the law of the country of origin and not the host country, this is known as **"Persona Non-Grata,"** which means the immunity is mutual. The UNO and its agencies also enjoy diplomatic immunity.

Rule of Law

The rule of law is the principle that all individuals and entities are accountable to fairly applied and enforced laws without bias. It ensures that no one is above the law, legal processes are transparent, rights are protected, and justice is upheld consistently.

The principle of **'Equality Before the Law'** is a fundamental component of the **'Rule of Law'** as articulated by **A.V. Dicey,** a renowned British legal scholar.

A.V. Dicey's Theory Encompasses The Following Three Fundamental Constituents or Dimensions

- The **absence of arbitrary power** means no individual can be punished except for violations of the established law.
- The principle of equality before the law, where every citizen, regardless of wealth, status, or office, is subject to the **same legal standards** upheld by the ordinary law courts.
- The primacy of rights of the individual, meaning that the constitution is the result of the individual rights, enforced by the judiciary, rather than being the origin of those rights.

In the **Indian framework,** the first two principles—prohibition of arbitrary power and equality before the law—are relevant, whereas the third principle differs. In India, the Constitution is the source of the rights of individuals.

The Supreme Court in **Indira Gandhi v. Raj Narayan (1975)** determined that the 'Rule of Law' as mentioned in Article 14 is part of the 'basic structure' of the Constitution, and therefore, it cannot be destroyed by any constitutional amendment.

The Rule of Law is A Fundamental Principle of Governance That Encompasses The Following Key Points

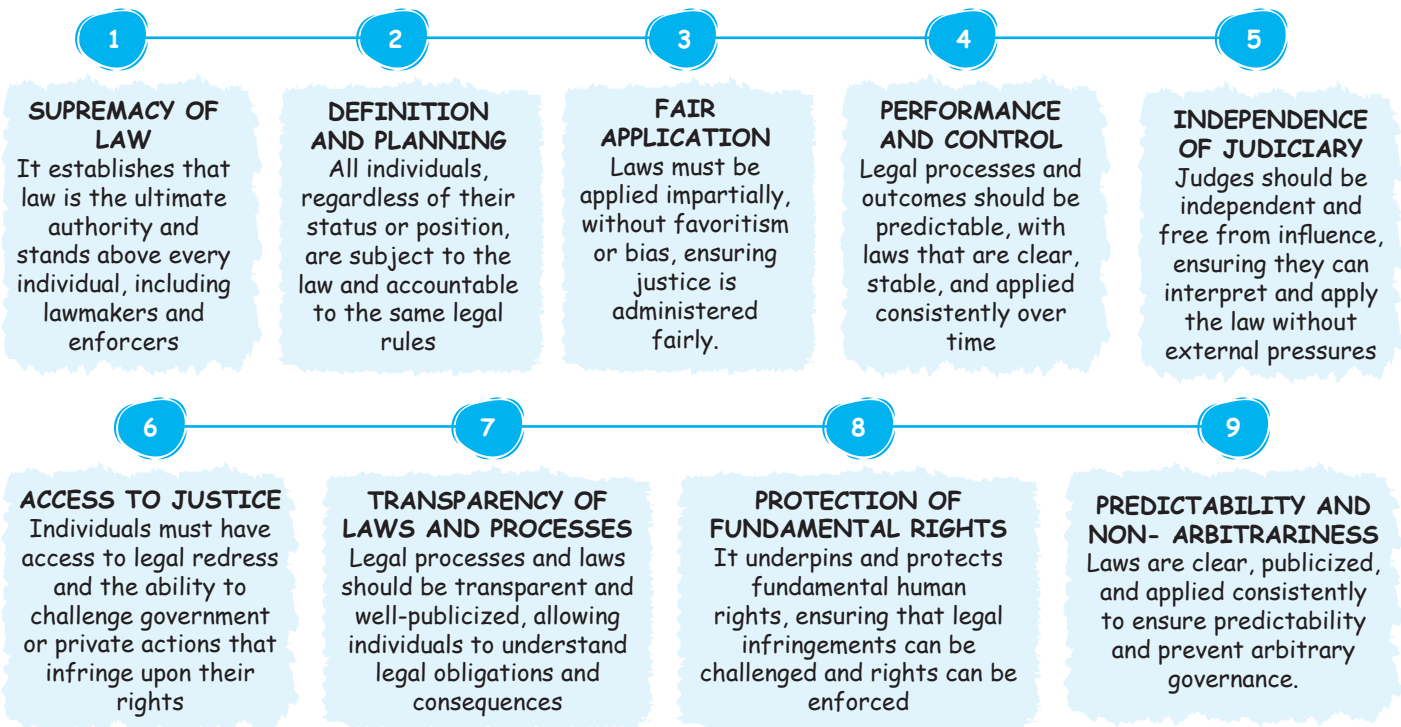

1
SUPREMACY OF LAW
It establishes that law is the ultimate authority and stands above every individual, including lawmakers and enforcers
2
DEFINITION AND PLANNING
All individuals, regardless of their status or position, are subject to the law and accountable to the same legal rules
3
FAIR APPLICATION
Laws must be applied impartially, without favoritism or bias, ensuring justice is administered fairly.
4
PERFORMANCE AND CONTROL
Legal processes and outcomes should be predictable, with laws that are clear, stable, and applied consistently over time
5
INDEPENDENCE OF JUDICIARY
Judges should be independent and free from influence, ensuring they can interpret and apply the law without external pressures
6
ACCESS TO JUSTICE
Individuals must have access to legal redress and the ability to challenge government or private actions that infringe upon their rights
7
TRANSPARENCY OF LAWS AND PROCESSES
Legal processes and laws should be transparent and well-publicized, allowing individuals to understand legal obligations and consequences
8
PROTECTION OF FUNDAMENTAL RIGHTS
It underpins and protects fundamental human rights, ensuring that legal infringements can be challenged and rights can be enforced
9
PREDICTABILITY AND NON- ARBITRARINESS
Laws are clear, publicized, and applied consistently to ensure predictability and prevent arbitrary governance.

Fig. 10.6: Rule of Law

ARTICLE 15 - PROHIBITION OF DISCRIMINATION ON CERTAIN GROUNDS

While the principle of equality before law holds paramount importance in a just society, the concept of "unequal treatment for unequals" highlights a seemingly contradictory reality. How can we draw a clear line between legitimate affirmative action and discriminatory practices, ensuring that the pursuit of equality does not itself become a tool for perpetuating unfairness?

- **Article 15 (1):** The State shall not discriminate against any citizen on grounds only of **religion, race, caste, sex, or place of birth.**

  The two crucial words in this article are **'discrimination' and 'only'.** The term discrimination means to make an adverse distinction with regard to or to distinguish unfavourably from others. The word 'only' gives permission to discriminate on the basis of other provisions, for example, academic basis, etc.
- **Article 15 (2):** No citizen shall on the grounds only of **religion, race, caste, sex, place of birth, or any of them,** be subject to any disability, liability restriction or condition with regard to -
  - Access to shops, public restaurant, hotels, and place of entertainment or

- The use of wells, tanks, bathing ghats, roads and places of public resorts maintained wholly or partly out of state funds or dedicated to the use of the general public.

It is to be noted that **Article 15(2)** seeks to prohibit discrimination both by the **State and Private individuals** whereas **Article 15(1)** prohibits discrimination **only by the State.**

Articles	Added in the Constitution
Article 15 (1),(2),(3)	Original Constitution
Article 15 (4)	1st Constitutional Amendment Act,1951 (related to SC, ST communities.)
Article 15 (5)	93rd Constitutional Amendment Act,2005 (related to OBCs)
Article 15 (6)	103rd Constitutional Amendment Act,2019 (related to people falls under EWS category)

Article 15 (3): Nothing in this article shall prevent the State from making any special provision for women and children.

This article is an exception to this general rule of non-discrimination. It means that the State can make special provisions for women and children. In this regard, the **NALSA v. The Union of India case** recognizes **transgender as a third Gender.** The Union Government has recently proposed a 33% reservation for women in the Parliament and the State Legislatures.

Reservation for OBCS in Educational Institutions in India

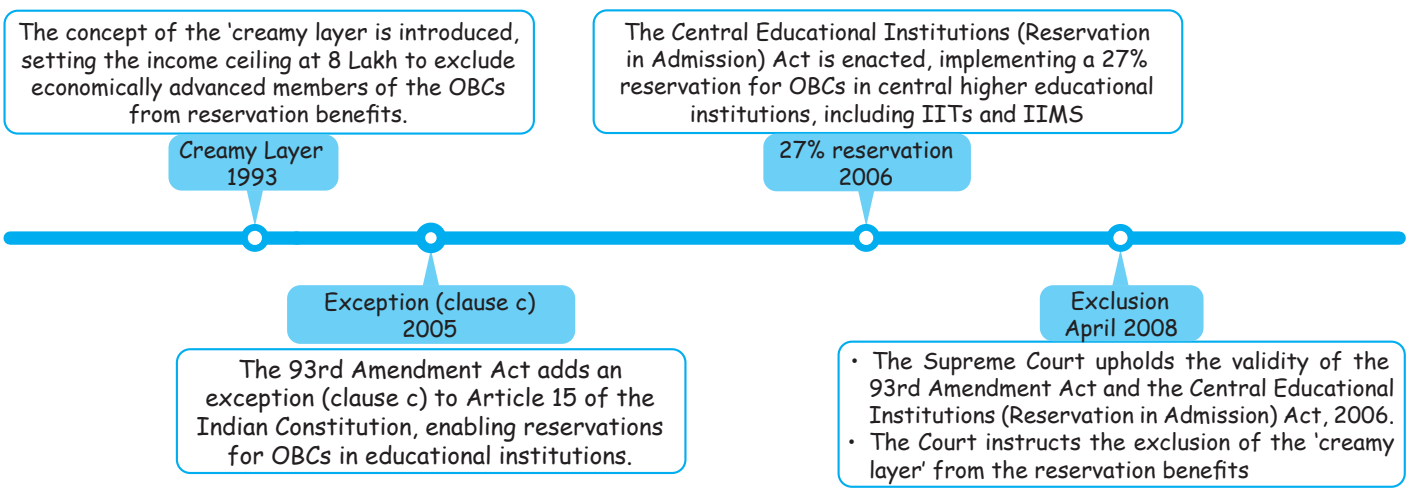

The concept of the 'creamy layer is introduced, setting the income ceiling at 8 Lakh to exclude economically advanced members of the OBCs from reservation benefits.
Creamy Layer 1993
The Central Educational Institutions (Reservation in Admission) Act is enacted, implementing a 27% reservation for OBCs in central higher educational institutions, including IITs and IIMS
27% reservation 2006
Exception (clause c) 2005
The 93rd Amendment Act adds an exception (clause c) to Article 15 of the Indian Constitution, enabling reservations for OBCs in educational institutions.
Exclusion April 2008
• The Supreme Court upholds the validity of the 93rd Amendment Act and the Central Educational Institutions (Reservation in Admission) Act, 2006.
• The Court instructs the exclusion of the 'creamy layer' from the reservation benefits

Fig. 10.7: Reservation for OBCs in Educational Institutions

Article 15 (4): Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

Article 15 (5): The State is empowered to make any **special provision** for the advancement of any socially and educationally backward classes of citizens or the scheduled castes or the scheduled tribes regarding their admission to educational institutions including private educational institutions, whether aided or unaided by the State, except the Minority Educational Institutions.

OBC Reservation

The OBC (Other Backward Classes) reservation in India refers to the **affirmative action policy** by the Indian government to promote the social and educational development of these historically disadvantaged groups.

The **93rd Amendment Act of 2005** introduced the aforementioned exception in the form of Article 15 (5). To operationalize this provision, the Central Educational Institutions (Reservation in Admission) Act, 2006 was enacted by the Centre. This legislation mandated a 27% reservation for candidates from the Other Backward Classes (OBCs) in central higher educational institutions, including prestigious institutions like the Indian Institutes of Technology (IITs) and the Indian Institutes of Management (IIMs).

Commissions Related to OBCs

The **Kalelkar Commission and the Mandal Commission** are two significant commissions in India which dealt with the issue of reservation for Other Backward Classes (OBCs)

❑ **Kalelkar Commission:**

- **Formation:** The Kalelkar Commission, officially known as the **"Backward Classes Commission,"** was appointed in **1953** under the chairmanship of

Kaka Kalelkar to determine the criteria for assessing backwardness.

- **Recommendations:** The commission submitted its report in **1955,** suggesting the classification of backward classes into **three categories – Backward, More Backward, and Most Backward.** It recommended a certain percentage of reservations for these categories in educational institutions and government jobs.

❑ **Mandal Commission:**

- **Formation:** The Mandal Commission, officially known as the **"Second Backward Classes Commission,"** was constituted in **1978** under the chairmanship of B.P. Mandal.
- **Objective:** The primary goal was to identify the socially and educationally backward classes and recommend measures for their upliftment.
- **Recommendations:** The **Mandal Commission Report** assessed that **52%** of the population belonged to the OBC category. The Mandal Commission submitted its report in 1980, with the following recommendations:
  - ❒ A **27%** reservation in **public sector** and **government jobs** should be extended to **Other Backward Classes (OBCs).**
  - ❒ This allocation should also apply to promotions at all stages of public services.
  - ❒ If the reserved quota remains unfilled, it should be carried forward for a duration of three years and dereserved after that.
- These recommendations were implemented by the government in 1990, leading to significant political and social debates.
- **Impact of Mandal Commission Report:** The government's implementation of the Mandal Commission led to widespread protests, with students resorting to self-immolation in opposition to the government's intent to enforce it. Subsequently, the implementation faced a legal challenge in the case of **Indra Sawhney vs Union of India.**
- **Supreme Court Ruling in Indira Sawhney Case:**
  - ❒ In the Indira Sawhney case, the Supreme Court deemed the **27% reservations for Other Backward Classes (OBCs) constitutionally valid** but imposed specific conditions.
  - ❒ The court ruled that the reservation should not exceed the 50% cap except in some extraordinary situations. This rule should be applied every year. Additionally, the court specified that the reservation policy should not be extended to promotions.
  - ❒ The concept of the **"creamy layer"** was introduced by the court, aiming to exclude affluent individuals from the OBC community. Furthermore, the court emphasized that the carry-forward rule, which fills unoccupied vacancies in the subsequent year, should **not breach the 50% ceiling.**
  - ❒ **A permanent statutory** body should be established to examine complaints regarding the OBC list.
- **The Parliament** enacted the National Commission for Backward Classes Act,1993, and constituted the National Commission for Backward Classes (NCBC)
- **102nd Constitutional Amendment Act, 2018** provided constitutional status to the NCBC and enlarged its functions. This amendment inserted a new Article 338-B in the Constitution.

Individuals from the following Groups are Classified as Part of the 'Creamy Layer' Among OBCs and are therefore Ineligible for Quota Benefits

❑ Individuals occupying constitutional positions such as the President, Vice-President, Supreme Court and High Court Judges, Chairpersons and Members of UPSC and SPSCs, the Chief Election Commissioner, the Comptroller, and Auditor General, among others.

❑ Those serving in Group 'A'/Class I and Group 'B'/ Class II in All India, Central, and State services, along with employees in equivalent roles in Public Sector Undertakings, Banks, Insurance Companies, Universities, and in the private sector.

❑ Army personnel ranked Colonel and above, and their equivalents in the Navy, Air Force, and Paramilitary Forces.

❑ Professionals like doctors, lawyers, engineers, artists, authors, and consultants.

❑ Individuals involved in trade, business, and industry.

❑ People owning agricultural land exceeding a specified limit and those possessing vacant land or buildings in urban areas.

❑ Those with a gross annual income exceeding ₹8 lakh or owning wealth above the exemption limit. Notably, the "creamy layer" income threshold has been revised multiple times: from ₹1 lakh in 1993, to ₹2.5 lakh in 2004, ₹4.5 lakh in 2008, ₹6 lakh in 2013, and ₹8 lakh in 2017.

Cases	Judgement	Fallout
State of Madras v. Champakam Dorairajan, 1950	The court ruled that caste-based reservations violate Article 15(1) of the Constitution. It said reservation was an exception to equality and hence violated the right to equality.	It led to the introduction of the First Amendment of the Constitution, which invalidated the judgment.
M. R. Balaji v. State of Mysore, 1963	The Mysore government's 68% reservation in college admissions was ruled as excessive and unreasonable, and was capped at 50%.	The Supreme Court in the Indra Sawhney case imposed the 50% limit on reservations in 1992.
Devadasan v Union of India, 1964	The court ruled that if reservations go beyond 50% they would be invalid.	Reservation was rationalised and was termed a facet of equality.
State of Kerala v NM Thomas	It reaffirmed the idea that reservation is not an exception but is necessary to establish equality. It ruled that Article 16(1)'s conception of equality itself includes remedial action to ensure due representation for hitherto excluded classes.	The ruling is considered to be the first definite judicial endorsement of the philosophy of reservation
Indra Sawhney & Others v. Union of India, 1992	The court upheld separate reservation for OBCs but excluded the "creamy layer". It rejected economic reservation and set a ceiling of 50% for all reservations.	The case was pressed again in 1999 and the Supreme Court reaffirmed the creamy layer exclusion and extended it to SCs and STs.
M. Nagraj & Others v. Union of India and Others, 2007	It upheld the 77th Amendment which extended reservations for promotion in employment for SCs and STs.	The court ruled that promotions should satisfy the triple test of backwardness, representation and the need for efficiency. Backlog vacancies were excluded from the 50% limit.
I. R. Coelho (deceased) by LRS. v. State of Tamil Nadu, 2007	Tamil Nadu advised by Supreme Court to follow 50% reservation limit	Tamil Nadu reservations were put under the 9th Schedule of the constitution, which had already been upheld by the court.
P. A. Inamdar v. State of Maharashtra, 2005	Reservations cannot be enforced on private educational institutions which do not receive government funding.	It led to the 93rd Constitution Amendment introduced Art 15(5).
Ashoka Kumar Thakur v. Union of India, 2007	It upheld the 93rd Amendment on reservation for admission to unaided educational institutions	It recommended reviews of backwardness every 10 years.
Ram Singh & Ors v Union of India, 2014	Struck down the inclusion of Jats in the Central list of OBCs	It proposed new ways to determine backwardness
Jaishri Laxmanrao Patil v Union of India, 2021	Maratha reservation struck down as unconstitutional	The 50% ceiling on reservations was reaffirmed
Janhit Abhiyan vs Union Of India, 2022	It upheld the 103rd Amendment which introduced 10% reservation for Economically Weaker Sections in education and public employment	A new reservation regime was created

Rohini Commission for Sub Categorisation of OBCs

- It was established on October 2, 2017, under **Article 340** of the Constitution, which grants the **President** the authority to appoint a Commission to investigate the conditions of backward classes.
- In 2018, a review of **1.3 lakh central government jobs** and OBC admissions in higher education showed that 97% of reservation advantages were concentrated within **25%** of OBC castes. Nearly **983 OBC communities,** making up **37%** of the total, had no representation in jobs and education, underscoring the necessity for sub-categorization.
- The Commission headed by Justice G. Rohini, tasked with sub-categorizing Other Backward Classes (OBC) caste groups, has finally submitted its awaited report to the Ministry of Social Justice and Empowerment after nearly six years of dedicated work. Although the specific recommendations remain undisclosed at this point, the government is anticipated to carefully review the report before any potential implementation.

Article 15 (6): The State is empowered to make any special provision for the advancement of any Economically Weaker Sections (EWS) of citizens.

Note:
Article 15 (4), 15 (5),15 (6) are exceptions to the general rule of non discrimination under Article 15 (1).

The **103rd Constitutional Amendment Act of 2019** added the aforementioned **Article 15(6),** which led to the central government's issuance of an order in 2019. This order grants a **10%** reservation to **Economically Weaker Sections (EWSs)** in educational institution admissions. Individuals eligible for this reservation are those from EWSs not covered under existing reservation schemes for SCs, STs, and OBCs. Some of the specified eligibility criteria are as follows:

- Individuals with a family gross annual income below **₹8 lakh** qualify as EWSs for reservation benefits. This income encompasses earnings from all sources, such as salary, agriculture, business, and profession, and pertains to the financial year preceding the year of application.
- Individuals with family ownership or possession of any of the following assets are exempt from EWS identification, regardless of family income:
  - 5 acres of agricultural land and above.
  - Residential flat of 1000 sq.ft. and above.
  - Residential plot of 100 sq.yards and above in notified municipalities.
  - Residential plot of 200 sq.yards and above in areas other than notified municipalities.
- The property held by a family in different cities/locations would be clubbed together the property holding test to determine EWS status.
- Family for this purpose would include the person seeking reservation, his/her parents, his/her spouse, siblings below the age of 18 years and his/her minor children.

Relation Between Article 14 and 15

- Article 14 lays down the general principles of equality for all persons within the territory of India, while Article 15 elaborates on the specific application of these principles to prevent discrimination based on certain identified grounds.
- Both articles aim to achieve the objective of ensuring that every individual has the opportunity to live their life without facing unjust discrimination and in full equality before the law.
- Article 15 can be seen as an **extension of Article 14,** as it provides specific instances where equality must be upheld and goes a step further to address historical injustices by allowing for affirmative action.
- In essence, Articles 14 and 15 together form the core of the constitutional mandate to establish a society where all citizens are treated equally and fairly, providing a foundation for the rule of law and social democracy.

The Punjab and Haryana High Court declared the **Haryana State Employment of Local Candidates Act, 2020** as 'unconstitutional'. This act provides 75% reservation to locals in the private sector for jobs having a salary of less than ₹30,000 per month. The High Court termed the Act as 'violative of Part III of the Constitution of India'.

ARTICLE 16: "EQUALITY OF OPPORTUNITY IN MATTERS OF PUBLIC EMPLOYMENT"

Article 16(1) ensures equal opportunities for all citizens in matters of employment or appointment to any office under the State. **Article 16(2)** No citizen can face discrimination or be deemed ineligible for any state employment or office solely on the grounds of **religion, race, caste, sex, descent, place of birth, or residence.**

There are a **few exceptions** to the general rule of equality of opportunity in matter of public employment they are as follows:

- **Residency Requirements, Article 16(3): Parliament** has the authority to set residency requirements for specific jobs or positions within a state, union territory, or other local entities. Public Employment (Requirement as to Residence) Act of 1957 lapsed in 1974, and now there is no such provision for any state except **Andhra Pradesh and Telangana.**
- **Article 16(4) Reservation in State Services:** The State has the authority to reserve positions or appointments for any backward class that is not sufficiently represented in the state services.

The Supreme Court of India has held in several judgments that the above provision for reservation policies under Article 16 would be limited by Article 335 for the maintenance of efficiency of administration.

Article 335 directs the government to take special measures for the advancement of SCs and STs. But in doing so the government should ensure the maintenance of efficiency of administration. It, however, doesn't define the term 'efficiency of administration'.

- **Article 16(5) Religious or Denominational Requirements:** A law can provide that a person holding a position within a religious or denominational institution, or a member of its governing board, should belong to that specific religion or denomination.
- **Article 16(6) Economic Reservation:** The state can allocate up to 10% of job positions or appointments for economically disadvantaged citizens.The criteria for determining who falls under the economically weaker section will be defined by the state periodically, based on family income and other signs of economic hardship.
- **Legal Constraint:** In the case of reservation and promotion, the court cannot issue the writ of mandamus. The **"writ of mandamus"** is a legal remedy issued by a court to compel a public official or a government entity to perform a duty that they are legally obligated to perform. It is a command from a higher court to a lower court, public official, or government agency to do something specific that the law requires them to do.

Articles	When they got added in the constitution
Article 16 (1), (2), (3), (4), (5)	Original Constitution enacted in Jan,1950
Article 16 (4a)	77th Constitutional Amendment Act,1995
Article 16 (4b)	81st Constitutional Amendment Act,2000
Article 16 (6)	103rd Constitutional Amendment Act, 2019

Comparison between Article 15 and Article 16

Article 15	Article 16
❑ **It is negative** in expression or asks what the State is not supposed to do.	❑ **It is positive** in expression or asks the State to take positive actions towards the needy.
❑ Five grounds of no discrimination- **race, religion, caste,sex, and place of birth.**	❑ Seven grounds of no discrimination- **race, religion, caste, sex, decent, residence, and place of birth.**

Note:
Article 15 and 16 reflects the conscience of the makers of the constitution. It means that not just equals should be treated equally but also unequal i.e. unprivileged should be treated unequally viz-a-viz bringing reservation etc.

RESERVATION FOR ECONOMICALLY WEAKER SECTION

The Supreme Court has affirmed the constitutionality of the **103rd Constitutional Amendment,** which allocates a **10%** quota for Economically Weaker Sections (EWS) from the forward castes in public employment and educational institutions throughout India.

Significance of the Verdict

- **Addresses Inequality:** The 10% quota aims to reduce educational and income inequality in India by enabling economically weaker citizens, who have been financially unable to access higher education and public employment, to do so.
- **Recognition of the Economic Backwards:** Numerous individuals and groups, apart from the backward classes, are live in conditions marked by poverty and hunger. The suggested reservation via a constitutional amendment aims to grant constitutional acknowledgment to the economically disadvantaged from the upper castes.
- **Reduction of Caste-Based Discrimination:** This measure will progressively diminish the stigma linked to reservation, as it has traditionally been tied to caste, and individuals from the upper caste often view those who benefit from reservation with disdain.

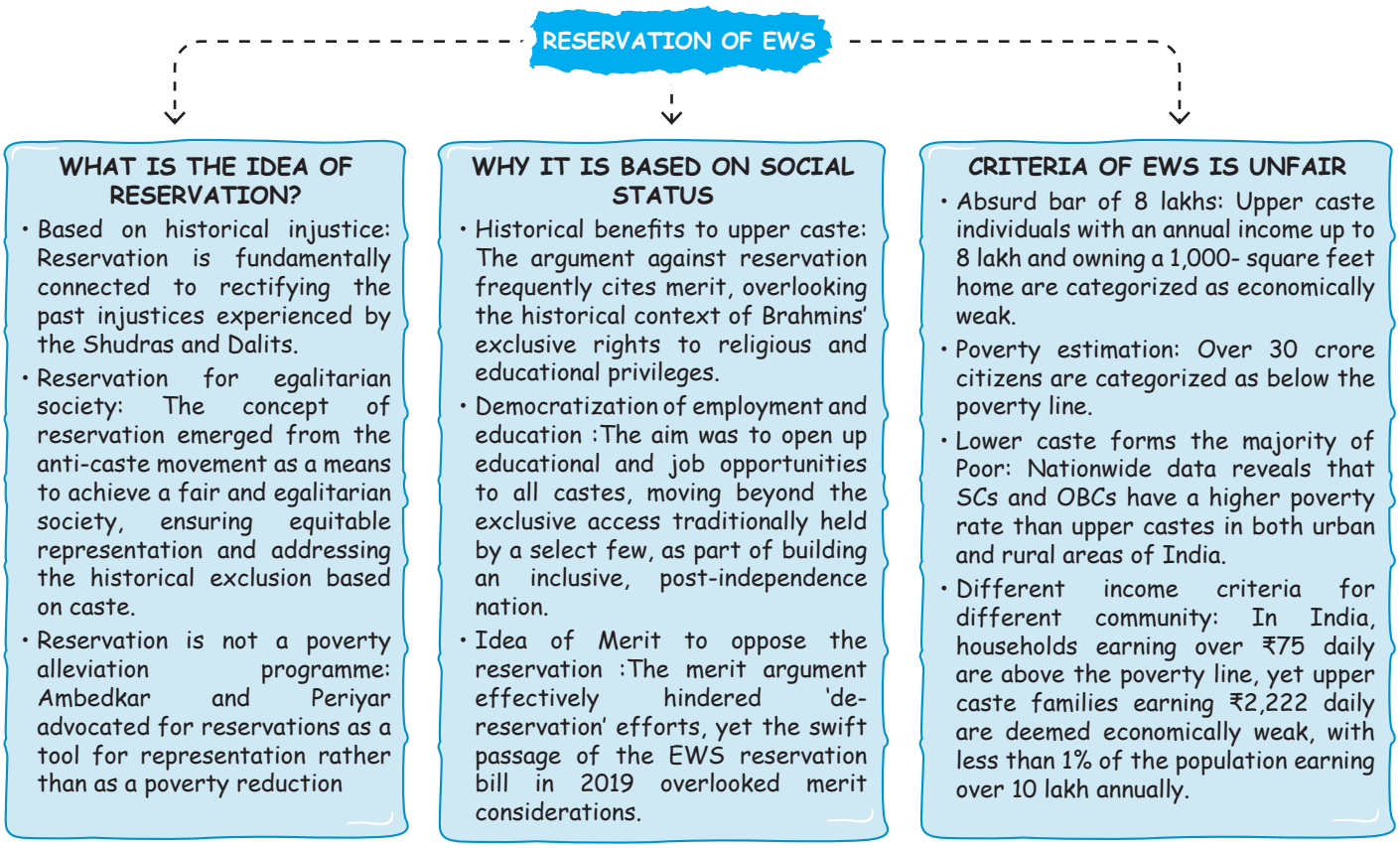

RESERVATION OF EWS
WHAT IS THE IDEA OF RESERVATION?
• Based on historical injustice: Reservation is fundamentally connected to rectifying the past injustices experienced by the Shudras and Dalits.
• Reservation for egalitarian society: The concept of reservation emerged from the anti-caste movement as a means to achieve a fair and egalitarian society, ensuring equitable representation and addressing the historical exclusion based on caste.
• Reservation is not a poverty alleviation programme: Ambedkar and Periyar advocated for reservations as a tool for representation rather than as a poverty reduction
WHY IT IS BASED ON SOCIAL STATUS
• Historical benefits to upper caste: The argument against reservation frequently cites merit, overlooking the historical context of Brahmins' exclusive rights to religious and educational privileges.
• Democratization of employment and education :The aim was to open up educational and job opportunities to all castes, moving beyond the exclusive access traditionally held by a select few, as part of building an inclusive, post-independence nation.
• Idea of Merit to oppose the reservation :The merit argument effectively hindered 'de-reservation' efforts, yet the swift passage of the EWS reservation bill in 2019 overlooked merit considerations.
CRITERIA OF EWS IS UNFAIR
• Absurd bar of 8 lakhs: Upper caste individuals with an annual income up to 8 lakh and owning a 1,000- square feet home are categorized as economically weak.
• Poverty estimation: Over 30 crore citizens are categorized as below the poverty line.
• Lower caste forms the majority of Poor: Nationwide data reveals that SCs and OBCs have a higher poverty rate than upper castes in both urban and rural areas of India.
• Different income criteria for different community: In India, households earning over ₹75 daily are above the poverty line, yet upper caste families earning ₹2,222 daily are deemed economically weak, with less than 1% of the population earning over 10 lakh annually.

Fig. 10.8: Idea of Reservation and EWS Reservation

Article 17: Abolition of Untouchability

"Untouchability" is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of untouchability shall be an offense punishable in accordance with law.

In 1976, the Untouchability (Offences) Act, of 1955 was extensively amended and renamed as the **Protection of Civil Rights Act, of 1955,** broadening its scope and enhancing penal provisions. The act defines civil rights as those stemming from the abolition of untouchability under Article 17 of the Constitution.

The term 'untouchability' lacks a constitutional or statutory definition, however , the **Mysore High Court** clarified it pertains to historical social disabilities based on caste, excluding practices like social boycott or exclusion from religious services. The Supreme Court affirmed that **Article 17** rights are available against **private individuals,** obligating the State to prevent violations.

Article 18: "Abolition of Titles"

This article of the Indian Constitution revolves around the abolition of titles, aiming to establish equality among citizens by preventing any sort of hereditary titles of nobility like **Raja, Nawab, Sahib, Bahadur** which were conferred by Colonial States as these are against the principle of equal status of all. It is available only to the citizens.

- **Article 18(1):** No title, not being a military or academic distinction, shall be conferred by the State

National Awards: In India, National awards hold a special significance as they are conferred by the Government of India to recognize and honor exceptional contributions in various fields, reflecting the country's diverse cultural, social, and economic fabric.National awards in India thus play a crucial role in acknowledging and celebrating the outstanding contributions of its citizens, promoting excellence and dedication across a multitude of domains.

This clause states that the Indian State shall not confer any titles on its citizens or a foreigner , except for military or academic distinctions.

- **Article 18(2):** No citizen of India shall accept any title from any foreign State.
  - This is to prevent external influence and to make sure that Indian citizens do not hold any special status or allegiance due to a title conferred by a foreign entity.
- **Article 18(3):** No person who is not a citizen of India shall, while he holds any office of profit or trust under the State, accept without the consent of the President any title from any foreign State.
  - This clause specifies that a non-citizen , holding any position of benefit or trust under the Indian State, cannot accept any titles from a foreign state unless they have permission from the **President of India.**

- **Article 18(4):** No person holding any office of profit or trust under the State shall, without the consent of the President, accept any present, emolument, or office of any kind from or under any foreign State.
  - No person- citizen or non-citizen, holding any office of profit or trust under the Indian State is not allowed to accept any gifts, salary, or any kind of office from or under a foreign state without the consent of the President.

RIGHT TO FREEDOM: ARTICLE 19 TO 22

Article 19: Protection of Certain Rights Regarding Freedom of Speech, etc. it Guarantees to All Citizens the Six Rights. these are

(i) Right to freedom of speech and expression.
(ii) Right to assemble peaceably and without arms.
(iii) Right to form associations or unions or co-operative societies.
(iv) Right to move freely throughout the territory of India.
(v) Right to reside and settle in any part of the territory of India.
(vi) Right to practice any profession or to carry on any occupation, trade or business.

Test of Reasonableness- It means in applying the test of reasonableness,the overarching measure is whether the law appropriately balances societal control with the individual's rights.

Originally, Article 19 had seven rights, but the **44th Amendment Act of 1978** removed the right concerning property acquisition, holding, and disposal. The six rights are protected against only state action and not private individuals.

Additionally, these rights are applicable solely to **citizens and shareholders** of a company, excluding foreigners and legal entities such as corporations. The state can only place **'reasonable' restrictions** on these rights based on the grounds specified within **Article 19(2)** and not on any other grounds.

Article 19(1) (a): Every Citizen Shall Have The Right— To Freedom of Speech And Expression

Supreme Court Judgement:

Navtej Singh Johar v/s Union of India,2018- Section 377 of the IPC, when examined under Article 19(1)(a), appears to impose an undue limitation on the fundamental rights to freedom of expression and choice for the LGBTQ community. It was one of the reasons for declaring it as unconstitutional.

This means that every citizen of India has the right to voice their opinion, speak freely, and communicate their ideas without fear of retaliation or censorship from the government except on reasonable grounds.The word **'expression'** has a broader

concept than just speech. This means that citizens have the right to express their thoughts, ideas, and opinions in various formats, such as writing articles, creating artwork, making films, social media, and the press.

The Supreme Court stated that the right to freedom of speech provides citizens the liberty to pursue their own beliefs or political leanings within the framework of the Indian Constitution. This right is co-related to fundamental duties envisaged under **Article 51A (Fundamental Duties).**

Reasonable Restrictions on the Exercise of the Freedom of Speech and Expression can be Imposed by the State on the following Grounds

- Sovereignty and integrity of India(added by 16th amendment act)
- Security of the state
- Friendly relations with foreign states (added by 1st amendment act, 1951)
- Public order, decency or morality (added by 1st amendment act, 1951)
- Contempt of court
- Defamation and incitement to an offense.

Defamation

- Saying or writing something that harms the reputation of others. It is termed slander when done verbally and libel when done in a written form.
- In India, it is both a civil and criminal offense, but world over the trend is to reduce it to a civil offense. Offenses like murder which are prosecuted by the state are not just an offense against the family affected but the whole society itself. Thus the state which represents society has to get involved.
- Section 499 of IPC talks about defamation and section 500 talks about the punishment.

Issues with Treating It as a Criminal Offense

- Civil offenses are private wrongs between the entities involved. Defamation is treated as a private wrong in mature western democracies. Thus treating it as a criminal offense is providing a public remedy for a private wrong.
- It also has a pernicious effect on democratic societies as the fear of defamation leads to self censorship on journalists and opposition leaders. As the state uses

criminal defamation to coerce, it leads to unwarranted self-restraint. The followers of leaders start filing defamation, the nature of social media non geographic leads to cases being filed in multiple parts across the country.

- It is used as harassment of social activists and opposition political leaders.
- Sec 499 also lists acts that would not amount to defamation. For e.g., imputations made on good faith would not lead to defamation, comments made on public performance of public servants, imputation of truth that serve public purpose. It has been found that magistrates are mechanically applying the sec 499 without looking at the exceptions.
- It is the exclusive preserve of elites with the common man unable to go through the hassles to either defend or go to court to frame charges.
- **Subramanian Swamy case, 2016:** In this case, criminal defamation was challenged.
  - The Government of India defended criminal defamation by saying that poor people don't have the financial capacity to pay damages, hence cannot pay damages. Hence it needs to remain a criminal offence. But the same is not applied to other offence like traffic fines, not getting tickets, which are civil offences.
  - Second argument was that it was the government's duty to protect the reputation of citizens.
  - Eventually, the court missed the opportunity and criminal defamation was upheld citing right to reputation as part of right to life.
  - The court also opined that the dignity and fraternity commitment in the preamble would be harmed if baseless allegations are made and a person may be alienated from the community.

Contempt of Court

The **contempt of Court Act of 1971** defined contempt, but the contempt powers of the court are mentioned in the constitution itself (Article 129).

- The act describes two types of contempt: Civil and Criminal contempt.
  - Civil: Breach of the order of the court or breach of undertaking given to the court.
  - Criminal: Anything that has the effect of scandalizing the court or has the tendency to do so, anything that interferes in the proceedings of the courts, or actions that obstruct the administration of justice.

Need for Such Powers

- There might be instances where the ruling is unpopular, thus harming the independence of the judiciary, and thus shielding them from malicious campaigns.
- If there is no independence of the judiciary, the public interest would be hurt.

Issues with Contempt of Court

- **Principle of Natural Justice:**
  - No person can be a judge in his own case.But in case of contempt of court, the judge presides over his own case.
- **Criminal contempt:**
  - Fair criticism is fine and allowed by law, but there are vague terms like scandalizing the court, obstruction of justice which can be abused.
  - While the Supreme Court has said that the shoulders of the Supreme Court are broad and can take all criticism, hence hypersensitivity is to be avoided.
  - So when fair criticism trespasses into the territory of scandalizing the court, there is no yardstick for evaluation. It depends on subjective assessment of application of justice and hence variability of justice which is a violation of the right to equality.
  - Equality of treatment in court forums is also a part of equality before law and it may even stifle genuine criticism and prevent the growth of the institution.

It Leads To Judiciary Being Considered Infallible

- It assumes that judiciary it can never be wrong.
- Judiciary is also composed of humans who are susceptible to human failings and hence any just criticism of the judge should not be misconstrued as criticism of the judiciary and contempt of court is not equal to contempt of judge.
- When the attack on a judge becomes an attack on the court, the line distinguishing between the two is blurred.
- In the UK, scandalizing the court has been removed as a ground for contempt, and in the US, after many judgements, a diluted version of contempt powers is used.

Mulgaonkar Guideline (1978)

Certain guidelines were laid for judges to exercise contempt powers:

- Economic Use of contempt powers is desirable.
- Harmonization between free criticism and judicial independence.
- Press should be given free play within reasonable limits.
- Judges shouldn't be hypersensitive.
- Distinction between contempt of court and that of judges.
- The Supreme Court has expressed in various judgements that the path of justice is not strewn or littered with roses and hence justice should be allowed to suffer the scrutiny and even the outspoken comments of the common man.
- In 2006, there was an amendment to Contempt of Courts Act, 1971, (CoCA) which provided for truth as a valid defense in contempt of court.
  - If there are allegations of corruption against the judge applied and if those turn out to be true, the contempt should not be proceeded with.

Hate Speech

Law Commission of India in its 267th Report has defined hate speech as an incitement to hatred primarily against a group of persons defined in terms of race, ethnicity, gender, sexual orientation, religious beliefs, etc.

Legal Provisions

- **Section 153A and 153B of the Indian Penal Code -** Provides for punishment for actions that create enmity and hatred between groups.
- **Section 505(1) and 505(2) of the Indian Penal Code -** Makes the publication and circulation of content which may cause ill-will between groups an offense.
- **Section 295A of the Indian Penal Code -** Provides for punishment for actions which deliberately or with malicious intention outrage the religious feelings of a class of persons.
- **Section 125 of the Representation of People Act, 1951** prohibits promotion of enmity or hatred between classes of citizens and considers it under corrupt electoral practices.
- **Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act ,1989** prohibits hate speech targeting Scheduled Caste and Schedule Tribe.

Judicial Cases

IPC Section 66A- Section 66A of the Indian Penal Code (IPC) was a provision that criminalized sending offensive messages through communication services. This controversial section, often criticized for being vague and infringing on freedom of speech, was struck down by the Supreme Court of India in 2015 for being unconstitutional and a violation of free speech rights under Article 19(1)(a) of the Indian Constitution.

- **Shaheen Abdulla vs Union of India and ors,2022:** The Supreme Court has directed the government and police authorities to take ***suo moto*** actions in cases of hate speech.
- **Pravasi Bhalai Sangathan v. Union of India ,2014:** Hate speech is not defined in any pre-existing legislation in India. In this case, the Supreme Court has requested the Law Commission of India to address this issue.
- **Shreya Singhal v. Union of India,2015:** Section 66A of the Information Technology Act,2000 was challenged as violative of the fundamental right of free speech and expression of the Constitution. The Supreme Court differentiated between discussion and incitement of hatred.

Issue of Hate Speech

Doctrine of Severability:

Severe means to cut,therefore severability refers to the situation when only a small part of the law is declared null and void due to its inconsistent nature vis-a-vis constitution and the rest continues to function.

- Definition of hate speech- It has not been defined under any legislation. Without an official definition it becomes difficult to establish clear guidelines targeting hate speech.
- It promotes social inequality. It reaffirms historical oppression and discrimination. Threat to the basic principles of fraternity and dignity of the individual.
- It incites violence which may lead to physical and psychological harm to its victims.
- Online hate speech is made easier with the spread of the internet. It becomes difficult to identify and remove such content.Many social media platforms like Meta and X (erstwhile Twitter) are struggling to moderate hate speech.
- Hate speech by public figures and politicians :it is challenging to hold them accountable.
- Balancing freedom of speech and hate speech. Hate speech can be viewed as a restriction on the fundamental right of speech and expression leading to many legal challenges.

What Needs to be Done

- **Bezbaruah Committee 2014** recommended making amendments in section 153 of IPC to punish acts and statements that promote racial discrimination.
- **Viswanathan Committee 2019** proposed insertion of section 153C (b) and section 505A in the IPC for stringent provisions. It also proposed for punishment of up to two years along with ₹5000 fine.
- Awareness programmes and initiatives to maintain cordial relationships ,to be taken by the government and civil society.
- Our education system can play a pivotal role in promoting social harmony and tackling hate speech through social sensitisation.

Raj Narain vs State of UP case (1975)- The Supreme Court stated that Right to Information is a Fundamental Right under Article 19.

- Right to Propagate one's view as well as views of others.
- Freedom of press
- Right against bandhs called by a political party or organization
- Freedom of commercial advertisement
- Right to telecast ,i.e. Government has no monopoly on electronic media.
- Right to know about government activities
- Freedom of Silence

- Right against tapping of telephonic conversation.
- Right against imposition of pre-censorship on a newspaper.
- Right to demonstration or picketing but **not right to strike**
- Right to access to information via internet
- Right of film-makers to exhibit their films

Note:
Right to strike is not covered under Fundamental Rights. It is a legal/statutory right.

Article 19(1)(b) : All Citizens Shall Have The Right– To Assemble Peaceably and without Arms

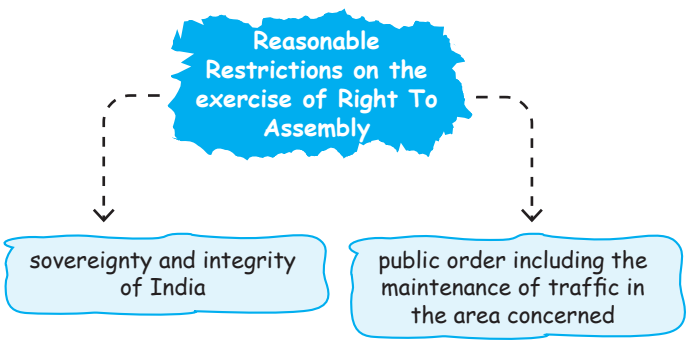

Reasonable Restrictions on the exercise of Right To Assembly
sovereignty and integrity of India
public order including the maintenance of traffic in the area concerned

Fig. 10.9: Article 19(1)(b)

This includes public meetings, rallies, protests, or any form of social gathering. The assembly must be peaceful and unarmed. This right can only be exercised on public land. It **does not include the right to strike.**

According to **Section 144** of the **Criminal Procedure Code (1973),** a **Magistrate** has the authority to prohibit an assembly, meeting, or procession when there is a potential for obstruction, annoyance, danger to human life, health, safety, disturbance of public tranquility, riot, or any affray.

According to **Section 141** of the **Indian Penal Code,** a gathering of five or more individuals is deemed unlawful if its purpose is:

- To resist the execution of any law or legal process
- To forcibly occupy the property of some person
- To commit any mischief or criminal trespass
- To force some person to do an illegal act
- To threaten the government or its officials on exercising lawful powers.

Reasonable Restrictions

- Sovereignty and integrity of India
- Public Order

Article 19(1)(c): All Citizens Shall Have The Right— To Form Associations or Unions or Co-operative Societies

- Every citizen possesses the right to establish associations, unions, or cooperative societies. This right encompasses the formation of political parties, companies, partnership firms, societies, clubs, organizations, trade unions, or any collective body.
- It extends beyond the initiation of such associations to the ongoing existence thereof. Additionally, this right encompasses the negative aspect of choosing not to establish or join an association or union.
- It also gives Right to form Cooperative Societies These are the associations where members collaborate for mutual benefit, often in economic or social endeavors. It was added to the constitution by the **97th Constitutional Amendment Act, 2011.**
- **Reasonable Restrictions:**
  - Sovereignty and integrity of India
  - Public Order
- Citizens have the full freedom to establish associations or unions to achieve legal aims and objectives. However, the right to obtain official recognition for the association is not considered a fundamental right.
- According to the **Supreme Court,** the trade unions do not have an inherent right to effective bargaining , the ability to strike, or the authority to announce a lockout. The right to strike can be regulated by an appropriate industrial law.

Article 19(1)(d) : All Citizens Shall Have The Right—To Move Freely Throughout The Territory of India

Note:
In **Kaushaliya vs State of U.P.** The Supreme Court ruled that the mobility of sex workers can be limited for public health reasons and to uphold public morals. Additionally, the **Bombay High Court** affirmed the limitations on the movement of individuals diagnosed with AIDS.

- This freedom grants every citizen the right to travel unrestricted within the country's territory. It allows seamless movement between states and within a state, emphasizing the unity of India. The objective is to foster national unity and discourage parochialism.
- The grounds of imposing reasonable restrictions on this freedom, are two, namely, the interests of the

general public and protect the rights of scheduled tribes. Restrictions in tribal areas aim to preserve the unique culture, language, customs, and livelihoods of scheduled tribes, safeguarding them from external exploitation.

- While **Article 19** safeguards the internal aspect of movement (freedom of movement inside the country), **Article 21,** which pertains to the right to life and personal liberty , addresses the external aspect (freedom to move outside the country).

Inner-Line Permit and Protected Area Permit - RESTRICTIONS ON MOVEMENT

Inner- Line Permit System

- It is a special permit required by domestic tourists (Indian citizens living outside these specific areas) to travel in these notified areas .
- We find its genesis under the **Bengal Eastern Frontier Regulation,1873.** It was introduced to protect the Crown's commercial interests by prohibiting 'British subjects' from traveling and trading within these regions.
- ILP is issued by the respective state government.
- Inner line permit areas in the North-east region
  - North-east region- Arunachal Pradesh ,Nagaland, Mizoram and Manipur
  - Also mandatory for Lakshadweep.

Protected Area Permit (PAP)

- Foreigners (Protected Areas) Order,1958 has defined the areas falling between the 'inner line' as defined in the order and the international border of the state as Protected Areas
- Foreigners need a Protected Area Permit to enter these notified areas.

Article 19(1)(e): All citizens Shall have The Right—To Reside and Settle in any Part of the Territory of India

- Every citizen has the right to reside and settle in any part of the country. This aims to eliminate internal barriers, fostering nationalism and preventing narrow-mindedness. It is to be noted that the rights to residence and movement are interconnected, complementing each other.

The State can impose **reasonable restrictions** based on the grounds of:

- **Interest of General Public-** In this regard Supreme Court stated that few areas can be banned for certain kinds of people like sex workers, habitual offenders.
- **The protection of interest of any scheduled tribe-** The right of outsiders to reside and settle in any tribal area is restricted to preserve the unique cultural practices, language, traditions, and behaviours of scheduled tribes, and to defend their traditional occupations and assets from being exploited.

Few Examples of Restricted Areas-

- Military area
- National Park
- Classified secret area

Moreover, the Supreme Court had stated that certain areas can be banned for certain categories of persons like habitual offenders and prostitutes.

Article 19(1)(f): All Citizens Shall Have The Right— To Practice any Profession, or To Carry on any Occupation, Trade or Business

- The right to profession is pivotal, providing individuals the freedom to choose and pursue a livelihood, fostering economic independence, creativity, and societal progress.Additionally, no citizen can be forced to conduct a business.
- This freedom safeguards the right of citizens to engage in business without State interference, except for reasonable restrictions serving the **public interest.** The State is empowered to impose **reasonable restrictions** by taking the following steps-
- To practice any profession , or to engage in any occupation, trade, or business an individual requires technical qualifications.
- To engage directly in any trade, business, industry, or service, whether fully or partially excluding citizens or not. The state is not required to justify its monopoly.
- This right does not extend to businesses that are unsafe (harmful drugs or explosives) or immoral (human trafficking) may be banned or regulated through licenses.

Right to Internet

The Supreme Court in **Anuradha Bhasin vs Union of India (2020) case** stated that the Freedom of speech and expression and to practice any profession over the medium of internet is a fundamental right under Article 19(1)(a) and 19(1)(g).

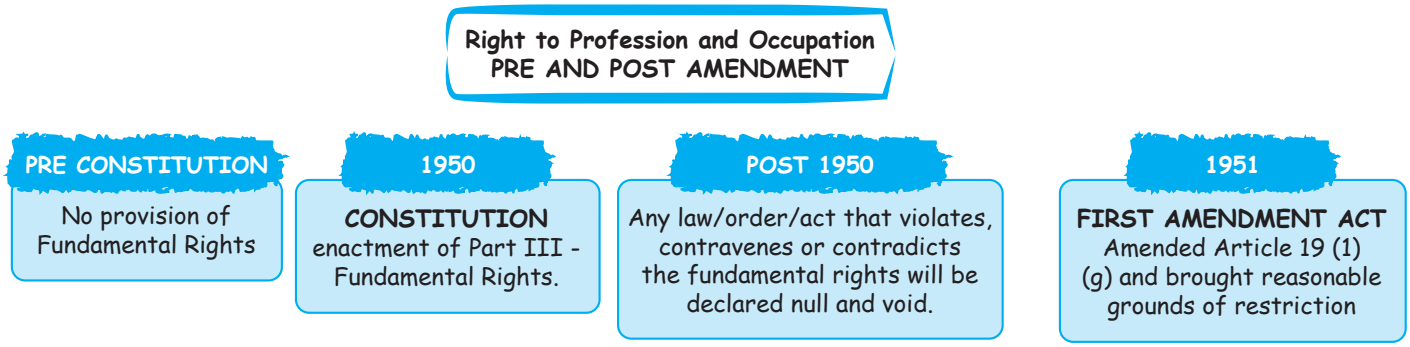

Right to Profession and Occupation
PRE AND POST AMENDMENT
PRE CONSTITUTION
No provision of Fundamental Rights
1950
CONSTITUTION
enactment of Part III - Fundamental Rights.
POST 1950
Any law/order/act that violates, contravenes or contradicts the fundamental rights will be declared null and void.
1951
FIRST AMENDMENT ACT
Amended Article 19 (1) (g) and brought reasonable grounds of restriction

Fig. 10.10: Article 19(1)(f)

Article 20: Protection in Respect of Conviction For Offenses

This article provides legal protection for an individual accused of a crime, ensuring that they are not subjected to punishment that is arbitrary and excessive. This protection is universal in nature, regardless of whether an individual is citizens of the state, foreigners, or even legal entities such as companies or corporations.

Article 20(1): Retroactive Laws are Prohibited or No Ex-Post- Facto Law

- An ex-post-facto law retroactively imposes penalties on past actions. However, it is prohibited for criminal laws but not for civil or tax laws (Imposition of retrospective taxation on Vodafone group is one such example).
- It applies to conviction, not trial, and does not cover preventive detention or demand of security from a person.
- This article emphasizes that no individual shall be (i) convicted of any offense except for violation of a law in effect at the time of the commission of the act, nor (ii) be subjected to a penalty greater than that defined under the law in force at the time of the commission of the offense.

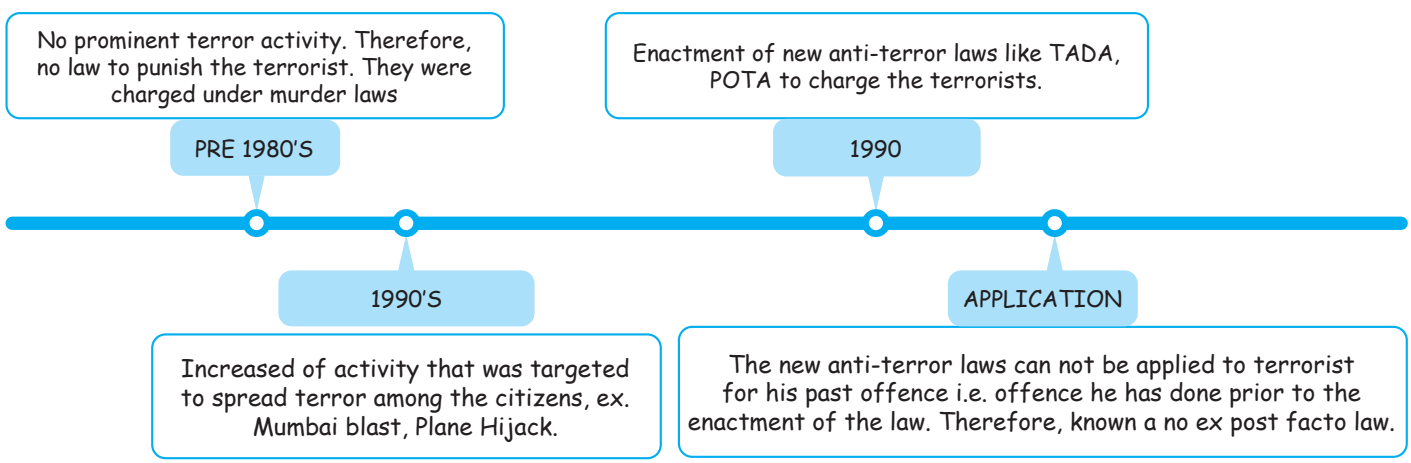

No prominent terror activity. Therefore, no law to punish the terrorist. They were charged under murder laws
PRE 1980'S
1990'S
Increased of activity that was targeted to spread terror among the citizens, ex. Mumbai blast, Plane Hijack.
Enactment of new anti-terror laws like TADA, POTA to charge the terrorists.
1990
APPLICATION
The new anti-terror laws can not be applied to terrorist for his past offence i.e. offence he has done prior to the enactment of the law. Therefore, known a no ex post facto law.

Fig. 10.11: Anti Terror Laws and No ex post facto

Article 20(2): Protection in Respect of Conviction For Offenses.—No Person Shall be Prosecuted and Punished For The Same Offense More Than Once

Section 300 of CrPC: It bars the Trial of a person not only for the same offense but also for any other offense on the same facts.

This article safeguards an individual from **double jeopardy** (punishing twice), which means once convicted , you cannot be punished or prosecuted again. This is available only in proceedings conducted before a legal court or a judicial tribunal and not before departmental or administrative authorities as they are not judicial in nature.

Article 20(3): Protection in Respect of Conviction For Offenses — No Person Accused of any Offense Shall Be Compelled To Be A Witness Against Himself

This article provides protection against **self-incrimination,** which means that no person can be forced to be a witness against himself, therefore making the **right to remain silent a fundamental right.**

This principle is a fundamental part of **due process of law.**

The protection against self-incrimination covers both oral and documentary evidence. But it does not cover following:

- Compulsory production of material objects
- Compulsion to give thumb impression, blood specimen, specimen signature
- Compulsory exhibition of the body.

Moreover, this protection **extends only to criminal proceedings** and does not cover civil proceedings or proceedings which are not of criminal nature.

Note: Miranda v/s Arizona 1966 was a landmark case in the **American judiciary.** It claimed that confession under police custody cannot be considered as evidence in the court of law. **Miranda warning or the right to remain silent** was a born child of this case.

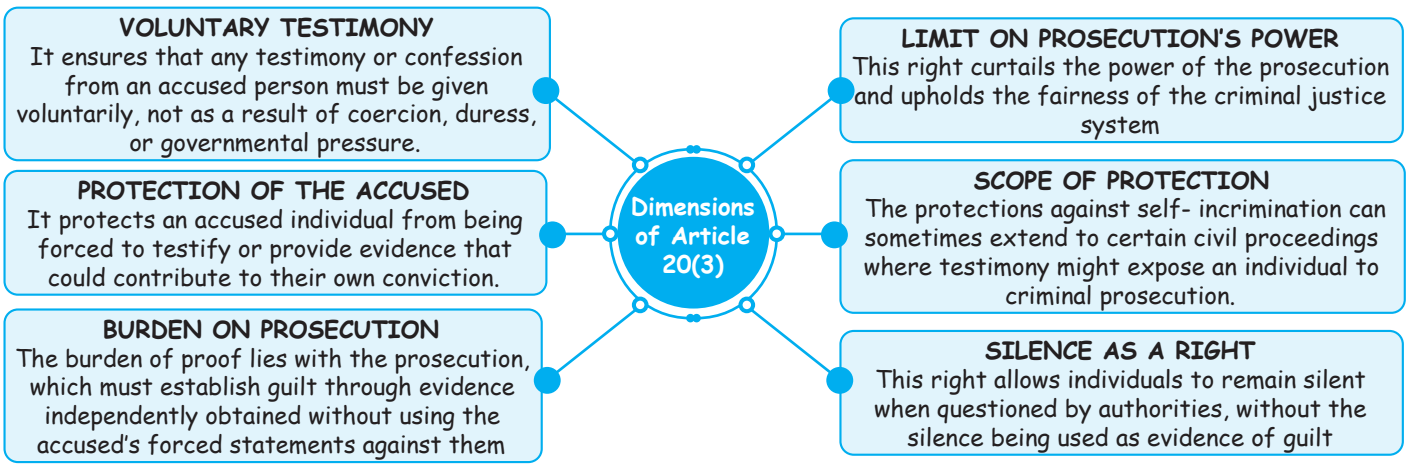

VOLUNTARY TESTIMONY
It ensures that any testimony or confession from an accused person must be given voluntarily, not as a result of coercion, duress, or governmental pressure.
PROTECTION OF THE ACCUSED
It protects an accused individual from being forced to testify or provide evidence that could contribute to their own conviction.
BURDEN ON PROSECUTION
The burden of proof lies with the prosecution, which must establish guilt through evidence independently obtained without using the accused's forced statements against them
Dimensions of Article 20(3)
LIMIT ON PROSECUTION'S POWER
This right curtails the power of the prosecution and upholds the fairness of the criminal justice system
SCOPE OF PROTECTION
The protections against self- incrimination can sometimes extend to certain civil proceedings where testimony might expose an individual to criminal prosecution.
SILENCE AS A RIGHT
This right allows individuals to remain silent when questioned by authorities, without the silence being used as evidence of guilt

Fig. 10.12: Dimensions of Article 20(3)

Bail, Parole and Furlough

All these three are all temporary releases from the legal custody but they differ in their underlying conditions and purposes.

Bail: It is a conditional per-trial release of an accused by undertaking a promise to appear before the Court as and when required. The accused is released after a security or collateral is deposited before the Court. Different types of bail in India:

Regular Bail: Release of a person already under arrest and in police custody after the release order of the Court. A person can file an application for regular bail under section 437 and 439 of CrPC.

Anticipatory Bail: Also called pre-arrest bail. It allows an accused person to apply for bail under section 438 CrPC before his arrest.

Interim Bail: It is a short or temporary release granted by the Court till the application for regular bail or anticipatory bail is pending before the Court.

Parole

It is a conditional release of a prisoner with suspension of the sentence, on the promise of good behaviour. The conditions for parole include regular reporting to parole officers, not engaging in illegal activities, residing within a specific geographic area. It is usually longer than furlough. It is not a matter of right and can be denied to a prisoner even if he has a sufficient case.

Furlough

It is a short or temporary release of a prisoner for a specific reason like visiting a sick family member, attending a family function. Eg- Chief of Dera Sacha Sauda was released on a 21 day furlough in November,2023.

It is seen as a matter of legal right to be granted periodically for enabling the prisoner to retain social and family ties.

RIGHT TO LIFE

Article 21: Protection Of Life And Personal Liberty.—No Person Shall Be Deprived of His Life or Personal Liberty Except According To Procedure Established By Law

Article 21 is the **bedrock of the Indian Constitution.** It represents the democratic principle of **liberty** and **life.** Western Philosopher **John Locke,** the father of liberalism, defined liberty as **'the freedom to act according to one's own will within the bounds of the law'**. However, the Supreme Court of India held that Article 21 is not merely confined to

animal existence or survival but it includes within its ambit the right to live with human dignity and all those aspects of life which go to make a man's life meaningful, complete and worth living. Thus, makes the scope of Article 21 broader than any other Article.

Golden Triangle of the Constitution of India: It refers to the interconnection between **Articles 14, 19, and 21**. It is considered that these three Articles collectively constitute the cornerstone of the democratic values enshrined in the Constitution. They are interdependent, and the harmonious overlapping ensures the wider application and protection of civil rights.

A.K. Gopalan vs. State of Madras (1950): Initially, the Supreme Court took a **narrow view** of Article 21. In this case,

- The court held that the right to life and personal liberty could be deprived based on the **"procedure established by law"** without questioning the fairness or justness of the law. The court held that protection under Article 21 is available only against arbitrary executive action and not from arbitrary legislative action.

Maneka Gandhi vs. Union of India (1978): This case marked a turning point in interpreting Article 21.

- The Supreme Court declared that the "procedure established by law" must be **fair, just, and not arbitrary,** effectively reading Article 14 (right to equality) and Article 19 (protection of certain rights regarding freedom of speech, etc.) into Article 21. It introduced the American concept of **"due process of law"** extending the protection under Article 21 against arbitrary legislative action. Due Process of law derives its essence from the **Principle of Natural Justice.**

This article makes the constitution a living document, as with time, it allows to open arms for new changes that are demanded in society.

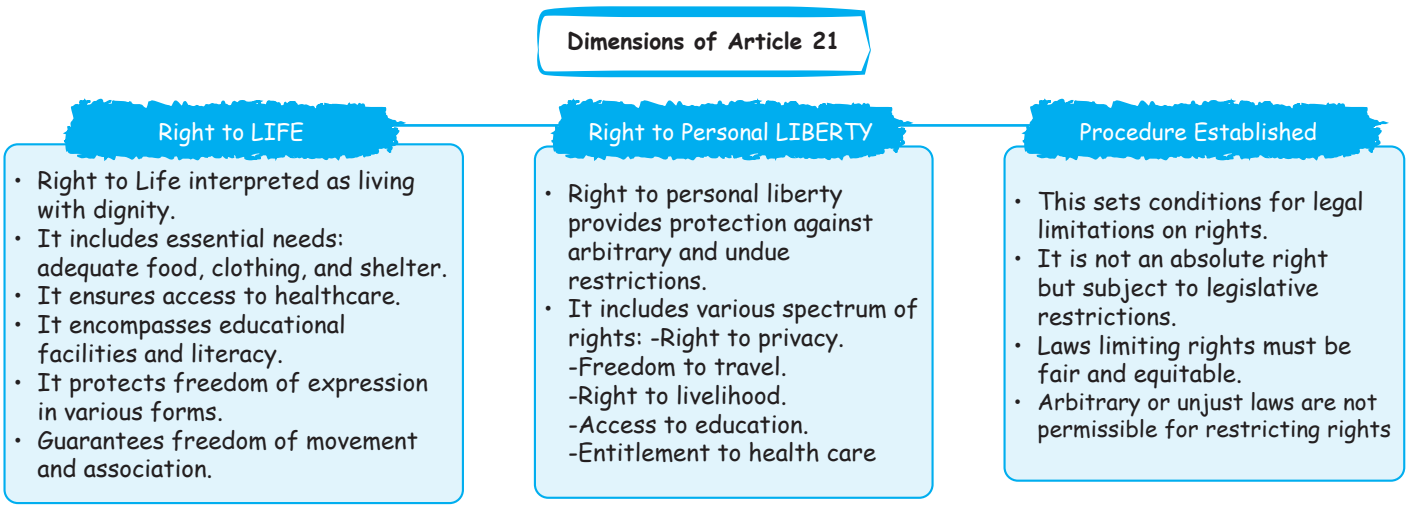

Dimensions of Article 21
Right to LIFE
• Right to Life interpreted as living with dignity.
• It includes essential needs: adequate food, clothing, and shelter.
• It ensures access to healthcare.
• It encompasses educational facilities and literacy.
• It protects freedom of expression in various forms.
• Guarantees freedom of movement and association.
Right to Personal LIBERTY
• Right to personal liberty provides protection against arbitrary and undue restrictions.
• It includes various spectrum of rights: -Right to privacy.
-Freedom to travel.
-Right to livelihood.
-Access to education.
-Entitlement to health care
Procedure Established
• This sets conditions for legal limitations on rights.
• It is not an absolute right but subject to legislative restrictions.
• Laws limiting rights must be fair and equitable.
• Arbitrary or unjust laws are not permissible for restricting rights

Fig. 10.14: Dimensions of Article 21

Evolution of Article 21 through Judicial Cases

The evolution of Article 21 of the Indian Constitution is a testament to the dynamic and progressive interpretation of the Constitution by the Indian judiciary. Through various landmark cases, the scope of Article 21 has been significantly broadened beyond the mere right to life and personal liberty. Article 21 comprises following rights:

- Right to live with human dignity **-Francis Coralie Mullin vs. The Administrator, Union Territory of Delhi (1981)**
- Right to a pollution free, healthy environment- **M.C. Mehta vs. Union of India (1987) or Oleum Gas Leak Case**
- Right to livelihood- **Olga Tellis vs. Bombay Municipal Corporation (1985)**
- Right to Privacy- **Justice K.S. Puttaswamy (Retd.) vs. Union of India (2017)**
- Right to shelter- **Uttar Pradesh Avas Evam Vikas Parishad v/s Friends Co-op Housing Society, 1996**
- Right to free education up to 14 years of age **-Unni Krishna, JP v/s State of Andhra Pradesh,1993**
- Right to access justice **-Swapanil Tripathi Case (2018)**
- Right to free legal aid
- Right to speedy trial **-Hussain v/s Union of India,2017**
- Right to a fair trial- **Police Commissioner, Delhi v/s Registrar, Delhi High Court,1997**
- Right against solitary confinement
- Right against handcuffing
- Right against delayed execution
- Right against inhuman treatment
- Right against custodial harassment

- Right against bar fetters
- Right against public hanging
- Right of prisoners to have necessities of life
- Right of appeal from a judgment of conviction
- Right against bonded labour- **Bandhua Mukti Morcha vs. Union of India (1984)**
- Right to timely medical treatment in government hospital
- Right to emergency medical aid
- Right to travel abroad
- Right not to be driven out of a state
- Right to social and economic justice and empowerment
- Right to family pension
- Right to appropriate life insurance policy
- Right to opportunity
- Right to internet- **Faheema Shirin vs State of Kerala, 2019**
- Right to reputation
- Right to information
- Right to freedom from noise pollution
- Right to sleep
- Right to sustainable development
- Right to road in hilly areas
- Right of women to be treated with dignity and decency
- Right to a safe work environment- **Vishakha and Others vs. State of Rajasthan (1997):**
- Right to freedom of sexual orientation **-Navtej Singh Johar vs. Union of India (2018)**

Other important cases to refer

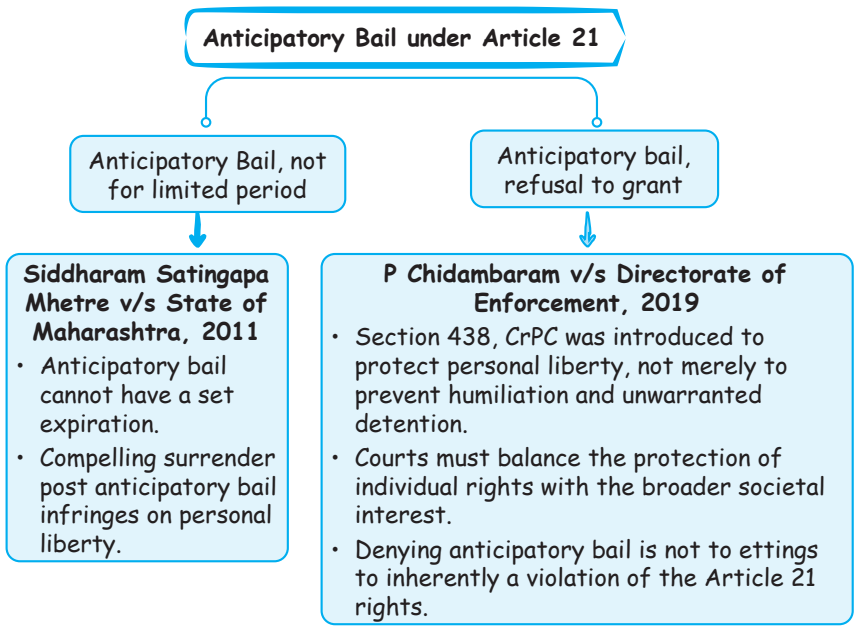

Anticipatory Bail under Article 21
Anticipatory Bail, not for limited period
Anticipatory bail, refusal to grant
Siddharam Satingapa Mhetre v/s State of Maharashtra, 2011
• Anticipatory bail cannot have a set expiration.
• Compelling surrender post anticipatory bail infringes on personal liberty.
P Chidambaram v/s Directorate of Enforcement, 2019
• Section 438, CrPC was introduced to protect personal liberty, not merely to prevent humiliation and unwarranted detention.
• Courts must balance the protection of individual rights with the broader societal interest.
• Denying anticipatory bail is not to ettings to inherently a violation of the Article 21 rights.

Fig. 10.15: Anticipatory Bail under Article 21

- **Decriminalization of Adultery:** In **Joseph Shine v/s Union of India (2018),** the Supreme Court ruled Section 497 of the IPC unconstitutional for violating Article 21 , asserting that-
  - It undermines women's equality and dignity by perpetuating gender stereotypes and implying women's subordination through the need for a husband's consent.
- **Preventive Detention: In Mohd Ibrahim Mohd Sasin v/s State of Maharashtra (1987)**, It was held that
  - The state government issued a preventive detention order following the immediate withdrawal of a prior order based on the Advisory Board's recommendations.
  - Despite being granted two delays, the government could not provide a legal justification for its decision in court.
  - Such action was found to infringe upon the constitutional rights protected by Articles 21 and 22.

Preventive detention has another dimension wherein if someone is held under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, it is mandatory to notify the detainee's family members about the detention order and the location where they are being detained.

Article 21a: Right To Education—The State Shall Provide Free and Compulsory Education To All Children of Six To Fourteen Years in Such A Manner as The State May, By Law, Determine

Article 21A mandates the state to provide free and compulsory education to all children aged six to fourteen years. Therefore, this clause grants the status of a Fundamental Right solely to primary education, excluding higher or professional education. This article was added to the Constitution of India through the **86th Amendment in 2002.**

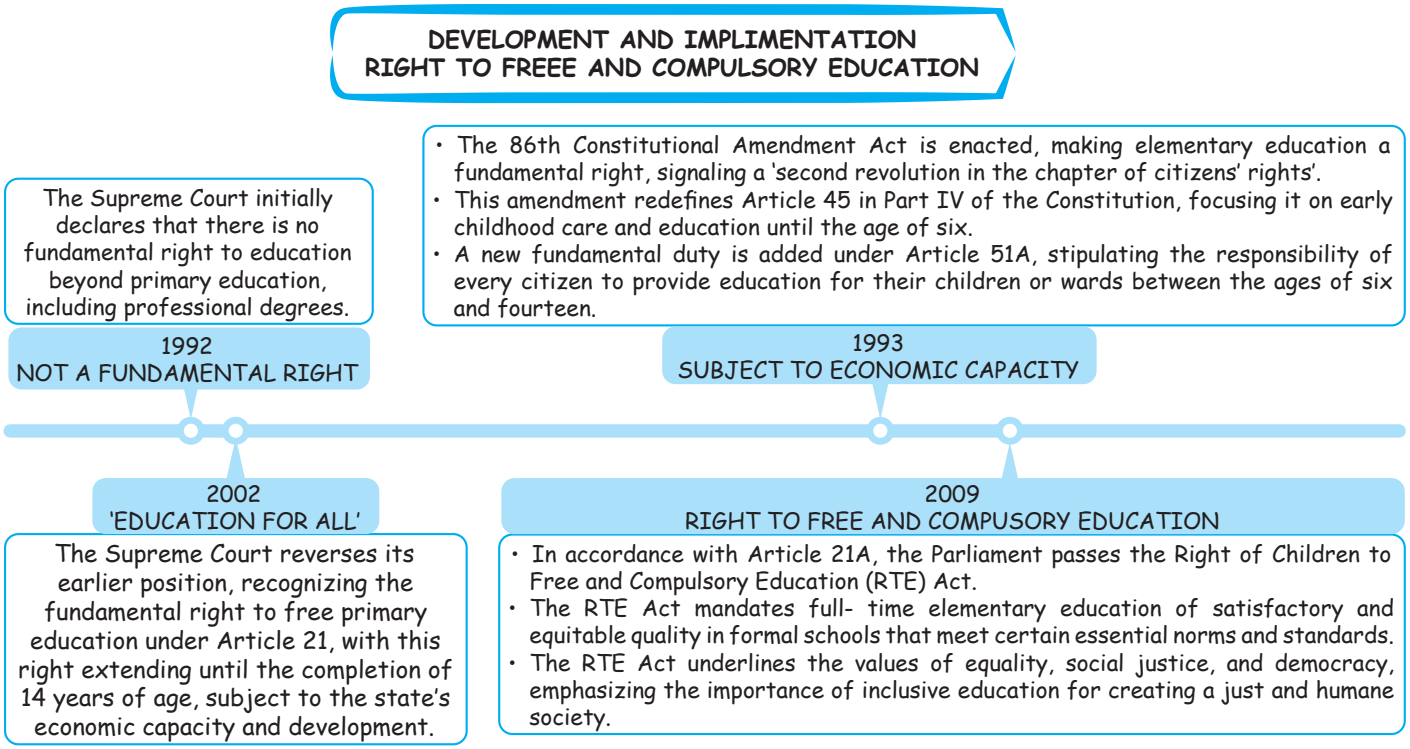

DEVELOPMENT AND IMPLIMENTATION
RIGHT TO FREEE AND COMPULSORY EDUCATION
1992
NOT A FUNDAMENTAL RIGHT
The Supreme Court initially declares that there is no fundamental right to education beyond primary education, including professional degrees.
1993
SUBJECT TO ECONOMIC CAPACITY
• The 86th Constitutional Amendment Act is enacted, making elementary education a fundamental right, signaling a 'second revolution in the chapter of citizens' rights'.
• This amendment redefines Article 45 in Part IV of the Constitution, focusing it on early childhood care and education until the age of six.
• A new fundamental duty is added under Article 51A, stipulating the responsibility of every citizen to provide education for their children or wards between the ages of six and fourteen.
2002
'EDUCATION FOR ALL'
The Supreme Court reverses its earlier position, recognizing the fundamental right to free primary education under Article 21, with this right extending until the completion of 14 years of age, subject to the state's economic capacity and development.
2009
RIGHT TO FREE AND COMPUSORY EDUCATION
• In accordance with Article 21A, the Parliament passes the Right of Children to Free and Compulsory Education (RTE) Act.
• The RTE Act mandates full- time elementary education of satisfactory and equitable quality in formal schools that meet certain essential norms and standards.
• The RTE Act underlines the values of equality, social justice, and democracy, emphasizing the importance of inclusive education for creating a just and humane society.

Fig. 10.16: Development and Implimentation Right To Freee and Compulsory Education

Article 22: Protection Against Arrest and Detention in Certain Cases

Article 22 provides safeguards for individuals who have been taken into custody (arrested) or detained.

Indian constitution mandates two kinds of detention which are -

IGNITE YOUR MIND

While the right to life enshrined in Article 21 has evolved to encompass the right to a clean environment, ensuring its effective implementation remains a challenge. How can we bridge the gap between legal pronouncements and concrete action to secure a healthy and sustainable future for all?

- **Punitive detention-** Punitive detention serves as a penalty for an individual following their conviction for a crime by a court of law after a trial.
- **Preventive detention-** Preventive detention refers to the confinement of an individual without a court trial or conviction, aimed not at penalizing for past actions but at averting potential future offenses. Hence, it is precautionary in nature and based on suspicion.

Article 22 Can Be Segregated Into Two Parts

(a) The first part of article 22 deals with the cases of ordinary law and the second part deals with the cases of preventive detention law.

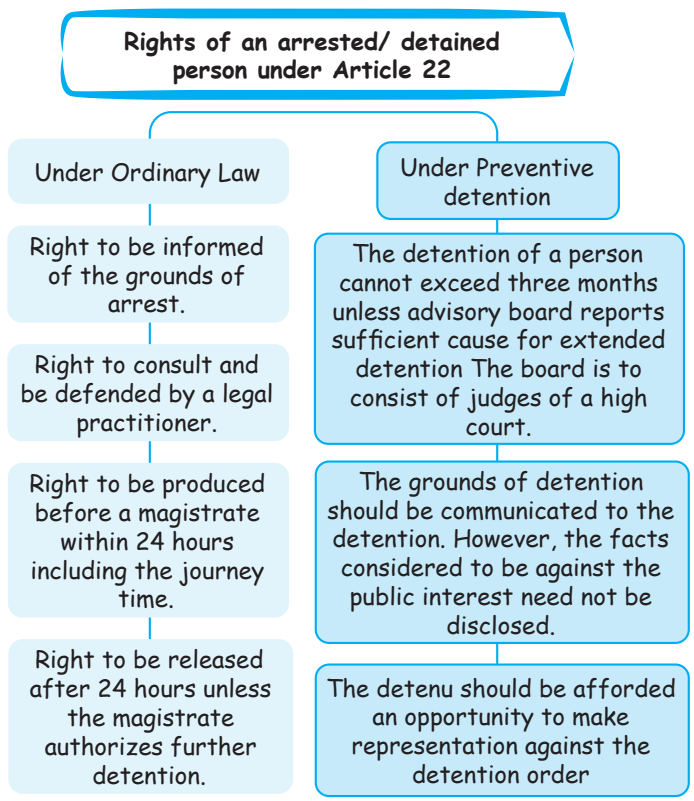

Rights of an arrested/ detained person under Article 22
Under Ordinary Law
Right to be informed of the grounds of arrest.
Right to consult and be defended by a legal practitioner.
Right to be produced before a magistrate within 24 hours including the journey time.
Right to be released after 24 hours unless the magistrate authorizes further detention.
Under Preventive detention
The detention of a person cannot exceed three months unless advisory board reports sufficient cause for extended detention The board is to consist of judges of a high court.
The grounds of detention should be communicated to the detention. However, the facts considered to be against the public interest need not be disclosed.
The detenu should be afforded an opportunity to make representation against the detention order

Fig. 10.17: Rights of an arrested/ detained person under Article 22

The protection under Article 22 is not extended to an enemy alien or a person arrested or detained under a preventive detention law.

The Supreme Court has declared that the provisions for arrest and detention outlined in the first section of Article 22 are not applicable to cases such as an arrest ordered by a court, civil arrest, arrest for non-payment of income tax, or the removal of a foreigner from the country. These protections are reserved exclusively for acts that are criminal or quasi-criminal in nature or conduct that is detrimental to the public good.

(b) The second part of Article 22 which deals with preventive detention is generally based on laws approved by the parliament.It protects an arrested person from arbitrary and ambiguous arrest. It is available to both citizens and aliens .

- Under Article 22(3)(b) of the Constitution of India, it is explicitly stated that a person detained under a preventive detention law **shall not be entitled to consult or be defended by a legal practitioner until the grounds of detention are disclosed to them.**
- However, it does not prevent the state government from providing legal counsel to the detained person if it chooses to do so.
- The state government has the discretion to provide legal assistance to ensure a fair and just process for the detained individual.

Under Article 22 The Parliament is Authorized To Outline

- The circumstances and the classes of cases in which detention of a person can exceed the three month period under a preventive detention law without obtaining the opinion of an advisory board.
- The maximum time period for which a person can be detained under such law.
- The procedure to be followed by an advisory board during inquiry.

The time period of detention without obtaining the opinion of the advisory board was reduced from three to two months by the 44th Amendment Act of 1978. But this provision has not yet been implemented, so the original period of three months still continues.

Legislative Powers For Making any Law Preventive Detention

The legislative authority (law-making powers) related to preventive detention is divided between the Parliament and the state legislatures by the Constitution. The Parliament holds the exclusive power to enact preventive detention laws related to defense, foreign affairs, and national security. Meanwhile, both the Parliament and state legislatures have the concurrent jurisdiction to legislate preventive detention concerning state security, public order, and maintaining essential community services and supplies.

Grounds for Preventive Detention:

- Security of State
- Maintenance of Public Order
- Maintenance of supplies and essential services
- Defense or foreign affairs

The Preventive Detention Act,1950 was repealed in 1969 due to concerns over human rights violations, its misuse as a tool for political suppression.

However, there are certain laws in India which have the features of Preventive Detention. Those are:

- Maintenance of Internal Security Act (MISA), 1971
- Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (COFEPOSA), 1974
- National Security Act (NSA), 1980
- Terrorist and Disruptive Activities (Prevention) Act (TADA), 1985
- Prevention of Terrorism Act (POTA), 2002
- Unlawful Activities (Prevention) Act (UAPA), 1967

These laws have often been contentious and criticized for their potential misuse against political dissenters and marginalized communities. The constitutional validity of such acts, especially with regard to the right to personal liberty, has been a subject of intense debate and judicial scrutiny.

RIGHT AGAINST EXPLOITATION

Article 23: Prohibition of Traffic In Human Beings and Forced Labour

In this article, the trading of human beings (also the devadasi), begar (forced labour without payment), and other comparable forms of compulsory labour are banned, and any violation of this rule shall be punishable by law. This right is available to all (both citizens and foreigners). It not only provides protection against the state but also against private individuals.

The Term 'Traffic In Human Beings' Means

- Buying and selling of human beings (men, women, children) as goods.
- The traffic in women and children for immoral purposes, such as prostitution
- The practice involving devadasis
- Slavery

To penalize these activities, the Parliament enacted the Immoral Traffic (Prevention) Act of 1956. Other laws complementary to this right are:

- Minimum Wage Act,1948
- Immoral Traffic(Prevention) Act,1956.
- The Bonded Labour System (Abolition) Act, 1976
- The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013

Countries like Israel and South Korea have a Conscription System (Mandatory military service). India can also bring this sort of compulsory public service if required but without any discrimination.

This article does not restrict the government from imposing compulsory service for the public good, for which it is not bound to pay and in imposing such service, the government shall not discriminate solely based on religion, race, caste, class, or any combination thereof.

The term 'begar' refers to mandatory labour without any form of compensation, a practice historically present in India where landlords (zamindars) would often coerce their tenants into unpaid work. Additionally, begar in Article 23 prohibits other 'similar forms of forced labour' like 'bonded labour'.

The term 'Forced labour' is defined as making an individual work against their wishes. 'Force' here is interpreted broadly, encompassing not just physical or legal force but also the pressure from economic situations, which can lead a person to work for less than a legally mandated minimum wage.

'Forced labour' means compelling an individual to work without their agreement.The term 'force' is broadly interpreted as including not just physical or legal force but also economic compulsion, driving a person to accept wages below the legal minimum.

Articles 17,23 and 24 are such Fundamental rights that cannot be exercised alone, which means that they need a Parliamentary mandate for their implementation .

Article 24: Prohibition of Employment of Children In Factories, Etc.—No Child Below The Age of Fourteen Years Shall Be Employed To Work in any Factory or Mine or Engaged in any Other Hazardous Employment

The prohibition under Article 24 extends to any labour that could jeopardize a child's health, safety, or morals, recognizing the need for children of such a young age to focus on their education and development rather than being subjected to labour. But it does not prohibit their employment in any harmless or innocent work.

This constitutional protection is a part of the Fundamental Rights and acts as a directive for the state to legislate and enforce laws to eliminate child labour in hazardous industries. Following acts prohibit the employment of children below certain age:

- The Child Labour (Prohibition and Regulation) Act, 1986 which was renamed by 2016 Amendment Act as the **Child and Adolescent Labour (Prohibition and Regulation) Act,1986.**
- The Employment of Children Act, 1938;
- The Factories Act, 1948;
- The Mines Act, 1952;
- The Merchant Shipping Act, 1958;
- The Plantation Labour Act, 1951;
- The Motor Transport Workers Act, 1951;
- Apprentices Act, 1961;
- The Bidi and Cigar Workers Act, 1966;

The Commission for Protection of Child Rights Act,2005 provided for the establishment of a National Commission for Protection of Child Rights and Children's Courts for speedy trials of offenses against children.

The government in 2006 prohibited the employment of children as domestic servants or workers in hotels, dhabas, factories, resorts, tea shops, and spas, etc. The person employing children below 14 years of age would be liable for penal actions.

RIGHT TO FREEDOM OF RELIGION

The Right to Freedom of Religion in the Indian Constitution is enshrined in Articles 25 to 28. which collectively assure every individual the liberty to live by their religious beliefs and practices.

Article 25: Freedom of Conscience and Free Profession, Practice, and Propagation of Religion

Article 25 establishes the freedom of conscience and the right to practice and propagate the religion to which a person may subscribe a fundamental right; the exercise of such right has been made subject to public order, morality, and health and also to the other provisions of part iii of the Indian constitution.

The principal element of Article 25 does not hinder the enforcement of any current laws, nor does it restrict the state from enacting new legislation aimed at social welfare and reform, or for ensuring access to religious institutions of a public nature to every category and segment of any religion.

The Above-Given Expression Describes The Following

- **Freedom of conscience:** It allows an individual the private autonomy to form their personal relationship with a deity or the universe as they see fit.
- **Right to profess:** It involves openly expressing and sharing one's religious convictions and faith.

- **Right to practice:** It entails engaging in religious worship, observances, rites, and the expression of religious beliefs and ideas.
- **Right to propagate:** It involves sharing and spreading one's religious doctrines to others, but it does not extend to coercing someone to convert to one's religion, as such coercion violates the universally guaranteed 'freedom of conscience'.

It is evident that Article 25 encompasses both the doctrinal aspects (beliefs) and the practical components (rituals) of religion. Additionally, these rights are granted to everyone, including both citizens and non-citizens.

These freedoms, however, are subject to public order, morality, health, and other provisions relating to fundamental rights. **Further, the State is permitted to:**

- Regulate or restrict any financial, economic, political, or other non-religious activities that are connected to the practice of religion.
- Enact measures aimed at social welfare and reform or ensure that Hindu religious institutions of a public nature are accessible to Hindus of all classes and segments.

Article 25 Includes Two Clarifications

- The Sikh practice of bearing kirpans is recognized as an aspect of their religious expression.
- Within the scope of this context, the term 'Hindus' encompasses individuals of Sikh, Jain, and Buddhist faiths.

Stanislaus vs. State of Madhya Pradesh (1977)

- The Supreme Court clarified that **Article 25** of the Constitution does **not confer the right to convert** someone to one's own religion. Instead, it grants the right to propagate and disseminate one's religion by explaining its principles.
- Furthermore, the apex court asserted that fraudulent or induced conversion not only violates an individual's right to freedom of conscience but also has implications for public order. Consequently, the state has the authority to regulate and restrict such practices in order to maintain public order.

Article 26: Freedom To Manage Religious Affairs

Article 26 secures freedom to manage religious affairs Subject to public order, morality and health, every religious denomination or any section thereof shall have the right

(a) To establish and maintain institutions for religious and charitable purposes;

(b) To manage its own affairs in matters of religion;

(c) To own and acquire movable and immovable property; and

(d) To administer such property in accordance with law.

Supreme Court verdict on recognition of Religious Denomination

The Supreme Court held that the 'Ramakrishna Mission' and 'Ananda Marga' are religious denominations within the Hindu religion. It also held that the Aurobindo Society is not a religious denomination.

Criteria

Idea of Secularism in Indian Constitution

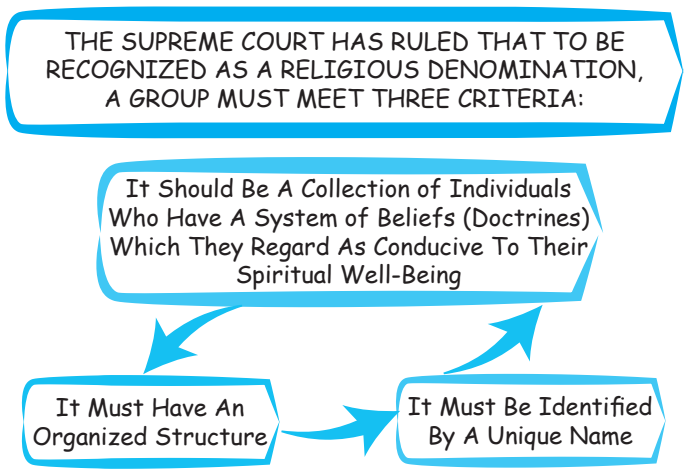

THE SUPREME COURT HAS RULED THAT TO BE RECOGNIZED AS A RELIGIOUS DENOMINATION, A GROUP MUST MEET THREE CRITERIA:
It Should Be A Collection of Individuals Who Have A System of Beliefs (Doctrines) Which They Regard As Conducive To Their Spiritual Well-Being
It Must Have An Organized Structure
It Must Be Identified By A Unique Name

Fig. 10.18: Criteria for Recognition as a Religious Denomination

- The initial exclusion of the word 'Secular' from the key descriptors of the Indian Constitution may have been an intentional decision due to concerns that the term might be interpreted as having an anti-religious sentiment.
- However, this was subsequently addressed by incorporating 'secular' into the Preamble through the 42nd Amendment Act of 1976.
- This addition was solidified by the judiciary's affirmation in the landmark S.R. Bommai v. Union of India case in 1994, where it was declared that secularism constitutes a core element of the Constitution's fundamental structure.

The Western understanding of secularism is built upon the principle of the trinity of liberty, equality, and neutrality.

- Liberty refers to the freedom of individual conscience.
- Equality ensures that all citizens are treated equally, regardless of their religious affiliations.
- Neutrality mandates a clear demarcation between religious institutions and state governance, preventing the state from aligning with or endorsing any religion.

The Constitution of India does not erect a wall between religion and the State; separate personal laws for various religious groups still exist despite India being a secular state; there is the prevalence of reservation on the basis of caste and; over the period of time there is increasing governmental regulation of religious institutions

Essential Religious Practice

- The doctrine of essential religious practices in India refers to the legal principle established by the Supreme Court to determine and protect the core rituals and observances integral to a religion.
- This doctrine recognizes that while religions may have various practices, certain essential elements form the foundation of the faith.
- These are the practices that might take away the spirit and essence of religion if not followed. For example- Namaz is essential religious practice but namaz at Masjid is a religious practice. For passing any judgment, the Supreme Court determines the essential practice.
- In the Shirur Mutt Case 1954, for the first time the Supreme Court came up with the doctrine of essentiality.
- In the case of **M Siddiq (D) Thr Lrs v. Mahant Suresh Das & Ors,** popularly known as the Ayodhya Dispute Case, the Supreme Court used the doctrine of essentiality to deliver justice.
- The doctrine of essential religious practices provides a legal framework for identifying and preserving the fundamental elements of a religion, contributing to the harmonious adjudication of religious disputes in India.

Rights of Women Entering Temples

- The right of women to enter temples has been a subject of legal, social, and often intense public debate in India. This issue intersects with several constitutional rights, including the right to equality (Article 14), the right to non-discrimination on the basis of sex (Article 15), and the right to freedom of religion (Articles 25-26).
- The Indian judiciary has addressed the issue in several judgments. A notable case is the **Sabarimala Temple case** in Kerala. In 2018, the Supreme Court of India ruled that the practice of barring women of menstruating age from entering the Sabarimala Temple was unconstitutional. The court held that this practice violated the rights to equality, non-discrimination, and religious freedom.
- Often, the argument against women's entry into certain temples is based on long-standing customs and traditions. However, the Supreme Court has asserted that when customs and traditions conflict with fundamental rights, the latter must prevail.
- The courts have been increasingly interpreting religious freedoms in the light of other fundamental rights, advocating for a more progressive and non-discriminatory approach to religious practices.

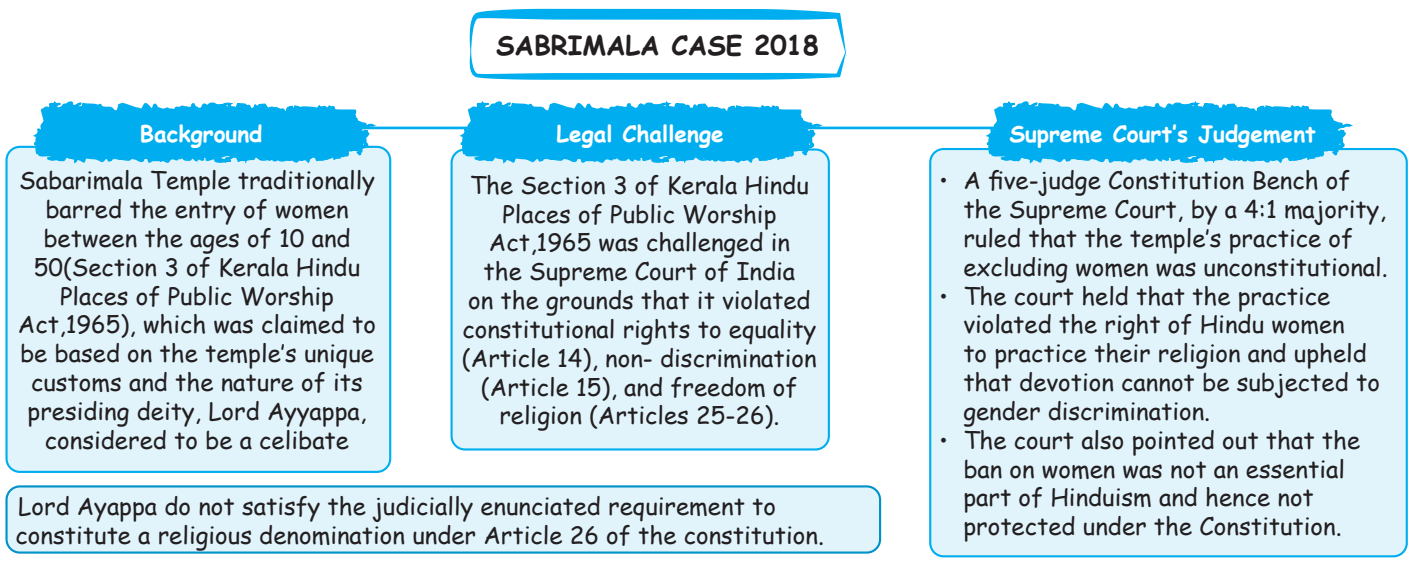

SABRIMALA CASE 2018
Background
Sabarimala Temple traditionally barred the entry of women between the ages of 10 and 50(Section 3 of Kerala Hindu Places of Public Worship Act,1965), which was claimed to be based on the temple's unique customs and the nature of its presiding deity, Lord Ayyappa, considered to be a celibate
Legal Challenge
The Section 3 of Kerala Hindu Places of Public Worship Act,1965 was challenged in the Supreme Court of India on the grounds that it violated constitutional rights to equality (Article 14), non- discrimination (Article 15), and freedom of religion (Articles 25-26).
Supreme Court's Judgement
A five-judge Constitution Bench of the Supreme Court, by a 4:1 majority, ruled that the temple's practice of excluding women was unconstitutional.
The court held that the practice violated the right of Hindu women to practice their religion and upheld that devotion cannot be subjected to gender discrimination.
The court also pointed out that the ban on women was not an essential part of Hinduism and hence not protected under the Constitution.
Lord Ayappa do not satisfy the judicially enunciated requirement to constitute a religious denomination under Article 26 of the constitution.

Fig. 10.19: Sabrimala Case 2018

- The court in Sabarimala case also held that the devotees of lord Ayyappan did not pass the constitutional test to be declared a separate religious identity- Religious denomination and that the temple's denominational rights to manage its own internal affair were subject to Article 25 (2)(b).
- The court struck down the Section 3(b) of the Kerala Hindu Places of Public Worship,1965 and held both in violation of constitution and ultra vires to section 3 and 4 of its parent act.
- The Sabarimala case was defined under constitutional morality. Acclaim for the exclusion of women from religious worship even if it be founded in religious text, it subordinates to constitutional values of liberty, dignity and equality. Exclusionary practices are contrary to constitutional morality.

Article 27: Freedom as To Payment of Taxes For Promotion of any Particular Religion

Article 27 secures the freedom from the imposition of taxes for the purposes of promotion of any specific religion. It lays down that no individual shall be forced to pay taxes that are specifically levied to fund or support any specific religion or

religious group.In other words, the government must not use public funds, which are accumulated through taxation, to advance or sustain any specific religious denomination.

This provision forbids the state from favouring patronizing, and supporting any particular religion over another. In that regard, tax can be utilized for the promotion or maintenance of all religions.

Important Judgements

- **In Prafull Goradia v. Union of India,** the petitioner challenged the allocation of government subsidies for Haj pilgrims.
  - He claimed this act breached Article 27 of the Indian Constitution.
  - Article 27 bars the state from forcing citizens to fund specific religious activities through taxes.
  - The petitioner's argument hinged on the tax being used for a religious purpose.
  - He pointed out that this tax was collected from people of various faiths, not solely from Muslims.
  - This, according to the petitioner, constituted a violation of Article 27's protections.
- The Supreme Court ruled that,Haj Subsidy does not violate Article 27:
  - Justifying its stand, the court stated that Subsidy does not represent a "substantial part" of government finances.
  - Article 27 breaches occur when taxes directly promote a religion.
  - Haj subsidy deemed too small a portion of total taxes to constitute such a promotion.
- **Union of India v/s Rafiq Shaik Bikhan, 2012**
  - Appealed to phase out Haj subsidy,
  - By 2018, Haj subsidy was phased out.
  - Thus, giving need based support to every religion.

This article prohibits the imposition of taxes but not fees since the objective of a fee is to manage the secular aspect of religious institutions, rather than to support and sustain the religion itself. Thus, fees can be charged to the pilgrims for providing them with some special service or safety precautions. Similarly, a religious endowment may be subject to fees for regulation expenditures.

Article 28: Freedom as To Attendance at Religious Instruction or Religious Worship in Certain Educational Institutions

Article 28 of the Indian Constitution deals with the freedom as to attendance at religious instruction or religious worship in educational institutions. This article has four clauses that clarify the extent to which religious education can be imparted in state-funded or state-recognized institutions.

Additionally, anyone enrolled in an educational institution recognized by the State or receives aid out of State funds is not obliged to participate in any religious teachings or ceremonies within that institution unless they consent to do so. For minors, such participation requires the approval of their guardian.

Therefore, Article 28 Differentiates Among Four Categories of Educational Establishments

- State-maintained institution.
- State-administered institution but established under any endowment or trust.
- State-recognized institution
- Institution receiving aid from the state.

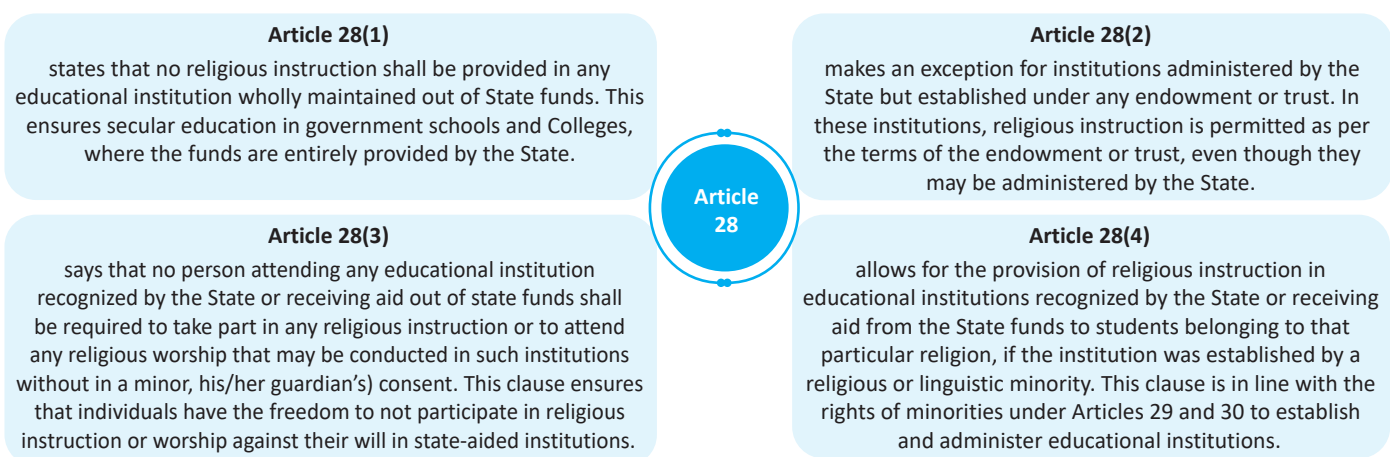

Article 28
Article 28(1)
states that no religious instruction shall be provided in any educational institution wholly maintained out of State funds. This ensures secular education in government schools and Colleges, where the funds are entirely provided by the State.
Article 28(2)
makes an exception for institutions administered by the State but established under any endowment or trust. In these institutions, religious instruction is permitted as per the terms of the endowment or trust, even though they may be administered by the State.
Article 28(3)
says that no person attending any educational institution recognized by the State or receiving aid out of state funds shall be required to take part in any religious instruction or to attend any religious worship that may be conducted in such institutions without in a minor, his/her guardian's) consent. This clause ensures that individuals have the freedom to not participate in religious instruction or worship against their will in state-aided institutions.
Article 28(4)
allows for the provision of religious instruction in educational institutions recognized by the State or receiving aid from the State funds to students belonging to that particular religion, if the institution was established by a religious or linguistic minority. This clause is in line with the rights of minorities under Articles 29 and 30 to establish and administer educational institutions.

Fig. 10.20: Article 28

Aruna Roy v/s Union of India, 2002

- In this case, a notable challenge was made against the content of school textbooks and the National Curriculum Framework for School Education developed by the National Council of Educational Research and Training (NCERT). The petitioners contended that the content in the textbooks and curriculum was communal rather than secular, thereby violating the constitutional principles of secularism and the right to education.
- The argument was based on Article 28 (1), which prohibits the imparting of 'religious instruction' in educational institutions fully funded by the state. However, it does

not prohibit the introduction of the study of religion in state educational institutions, including those wholly or partly aided by the state. The study of religion is considered necessary for the unity and integrity of India.

- This case raised significant concerns about the interpretation of historical facts, religious neutrality in education, and the state's responsibility to ensure that educational content aligns with the constitutional mandate of secularism.
- A crucial distinction was established between providing religious instruction, which includes teaching specific rituals, observances, customs, and traditions, and offering education about these traditions. This differentiation highlights the fine line between instruction and education, emphasizing that religious instruction is not synonymous with religious education or vice versa.

Places of Worship (Special Provisions) Act, 1991

Context: The Places of Worship (Special Provisions) Act, 1991, faces a legal challenge in the Supreme Court for allegedly obstructing judicial review. The Anjuman Intezamia Masjid, Varanasi, has contested a videography survey in the Kashi Vishwanath temple-Gyanvapi mosque complex, claiming it circumvents a previous stay order.

Background: The Act, enacted during the peak of the Ram temple movement, aimed to preserve communal harmony amid rising tensions. It imposed a status quo on religious places as of 1947 to prevent controversies.

Key Provisions of the Act:

Nature of Place of Worship:

No Alteration: Prohibits converting any place of worship or part of it to a different religious denomination.

Specific Date: Freezes the status quo of places of worship as of August 15, 1947.

Nullifies Suit or Appeal: Abates legal proceedings related to the conversion of the religious character before August 15, 1947.

Exceptions: Excludes ancient monuments covered by the Ancient Monuments and Archaeological Sites and Remains Act, 1958.

Does not apply to settled disputes or conversions by acquiescence before the Act commenced.

Exempts the Ram Janmabhoomi-Babri Masjid case from its purview.

Way Forward: Preserving India's secular ethos, upholding the rule of law, and considering global principles on safeguarding religious sites are crucial aspects for the way forward. The Act's review must balance legal intricacies with the preservation of India's pluralistic identity.

Tamil Nadu Hindu Religious and Charitable Endowments (HR&CE) Act, 1959:

Introduction:

The Tamil Nadu Hindu Religious and Charitable Endowments (HR&CE) Act, 1959, is a legislative framework governing Hindu religious institutions and endowments in Tamil Nadu. Enacted to ensure effective management and governance of temples, the Act empowers the government to supervise trusts, prevent maladministration, and protect devotees' interests.

Key Features:

Administration of Temples: The Act entrusts the Hindu Religious and Charitable Endowments Department with the administration and control of temples and their properties.

Appointment of Trustees: Trustees are appointed to manage temple affairs, overseeing financial matters, religious ceremonies, and overall temple upkeep.

Endowments: The Act addresses the management of endowments, ensuring their proper utilization for the benefit of the temple and devotees.

Financial Management: Provisions for maintaining temple accounts, audits, and submission of financial reports are outlined.

Regulation of Institutions: The Act applies to charitable and religious institutions, subjecting them to regulatory oversight.

Executive Officers: Executive officers may be appointed to assist in day-to-day temple administration under HR&CE Department supervision.

Supreme Court Observation:

The Supreme Court recognizes the need for state regulation to prevent mismanagement and protect the interests of devotees while emphasizing the importance of balancing such oversight with respect for religious practices.

Conclusion: The Tamil Nadu HR&CE Act, 1959, serves a crucial role in temple administration. However, ongoing debates center on achieving a balance between regulatory measures and the preservation of religious and cultural practices, a challenge that requires careful consideration and legal clarity.

CULTURAL AND EDUCATIONAL RIGHTS

Article 29: Protection Of Interests of Minorities

Article 29(1): Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

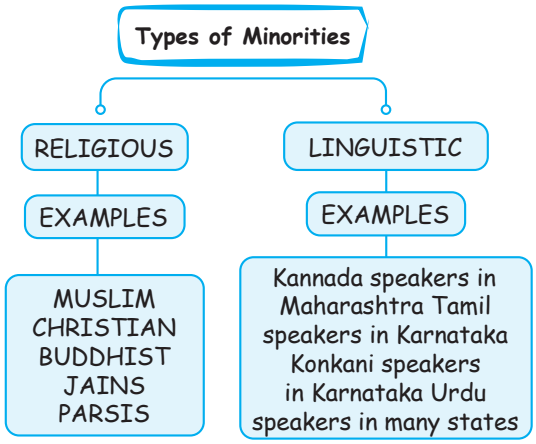


Fig. 10.21: Types of Minorities

Article 29(2): No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

- This provision falls under the umbrella of cultural and educational rights and serves to safeguard the rich diversity of India.
- The first provision safeguards the collective rights of a community, whereas the subsequent clause upholds the individual rights of a citizen, independent of their community affiliation. Article 29 grants protection to both religious minorities as well as linguistic minorities.
- **The word 'minority' has not been defined in the constitution.** Section 2(c) of the National Commission for Minorities Act, 1992, defines a "minority" for the purposes of the Act. According to this section, "minority", for the purposes of the Act, means a community notified as such by the Central government.
- This provision empowers the Central Government of India to recognize communities as minorities within the legal framework of the Act. Based on this provision, the communities recognized as minorities in India are Muslims, Christians, Sikhs, Buddhists, Parsis (Zoroastrians), and Jains. These communities are recognized for the purpose of ensuring their rights and protections as stipulated under the Act and the provisions of the Indian Constitution.
- In **Ashwini Upadhya v/s Union of India,2019;** Ashwini Kumar Upadhyay challenged the section 2(c) of the National Commission of Minority Act,1992 which gives unbridled power to the Centre to declare any community minority arbitrarily.
- **Article 29(2)** is a protective clause that ensures non-discrimination in educational opportunities provided by the State. It stipulates that no citizen shall be refused entry into any educational institution that is either operated by the State or receives financial aid from State funds, based solely on considerations of religion, race, caste, language, or any combination thereof.

Article 30: Right of Minorities To Establish and Administer Educational Institutions

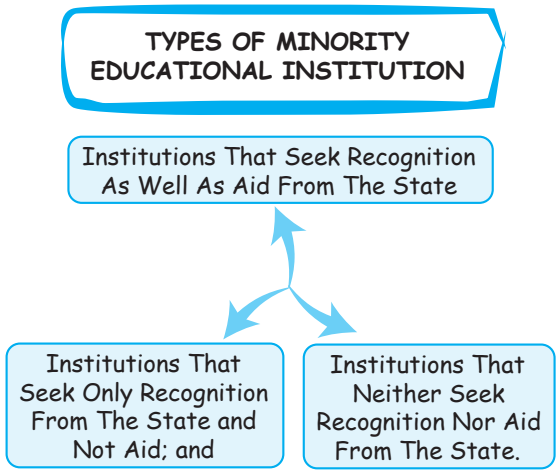

TYPES OF MINORITY EDUCATIONAL INSTITUTION
Institutions That Seek Recognition As Well As Aid From The State
Institutions That Seek Only Recognition From The State and Not Aid; and
Institutions That Neither Seek Recognition Nor Aid From The State.

Fig. 10.22: Types of minority educational institution

Article 30 of the Indian Constitution enshrines the right of minorities to establish and manage educational institutions. This provision is a cornerstone in India's educational and cultural pluralism architecture.

Article 30 provides rights to minorities both religious and linguistic:

- All minority groups are entitled to the right to establish and administer educational institutions according to their choice.
- The compensation amount fixed by the State for the mandatory acquisition of property from a minority educational institution shall not restrict or abrogate the right guaranteed to them.This protection was added by the 44th Amendment Act of 1978, which also removed the right to property as a Fundamental Right from Article 31.
- The state shall not discriminate against any educational institution in granting aid.

Therefore, protection under Article 30 is granted to minorities (religious or linguistic) only and not to any other section of citizens. The right under Article 30 also includes the right of a minority to impart education to its children in its own language.

The institutions that seek recognition as well as aid from the State and institutions that seek only recognition from the State and not aid, fall under the state's regulatory jurisdiction concerning curriculum setting, academic criteria, discipline, sanitation, employment of teaching staff and so on.

The institutions that neither seek recognition nor aid from the State retain autonomy over their internal management but are subject to enforcement of general laws such as those pertaining to contracts, labor, industry, taxation, economic oversight, and the like.

TMA Pai Foundation v/s State of Karnataka, 2002

This case dealt with the extent of the right of minorities to establish and administer educational institutions and the regulations that the state can impose on such institutions.

Under This Case The Supreme Court Gave The Judgement That

- The right under Article 30(1) cannot be such as to override the national interest or
- To prevent the government from framing regulations in that behalf and any regulation framed in national interest must necessarily apply to all educational institutions, whether run by the majority or the minority.

This judgment has had a profound impact on the educational landscape in India, particularly in terms of the administration of minority institutions and the balance of rights between these institutions and the regulatory authority of the state.

Secretary of Malankara Syrian Catholic College Case (2007)

The Supreme Court has outlined the fundamental guidelines for the establishment and management of minority educational institutions as follows:

- Minorities have the right to found and manage educational institutions as per their choice.
- The rights granted to minorities by Article 30 aim to achieve equality with the majority and not to give minorities a superior position compared to the majority. There is no preferential treatment for minorities. Laws concerning national interests, security, social welfare, public order, morality, health, sanitation, and taxation, which apply to everyone, are also applicable to minority institutions.
- The right to establish and manage educational institutions has limitations; it does not extend to poor administration. Although:

THE RIGHT OF MINORITIES TO ESTABLISH AND ADMINISTER EDUCATIONAL INSTITUTIONS OF THEIR CHOICE COMPRISES THE FOLLOWING RIGHTS

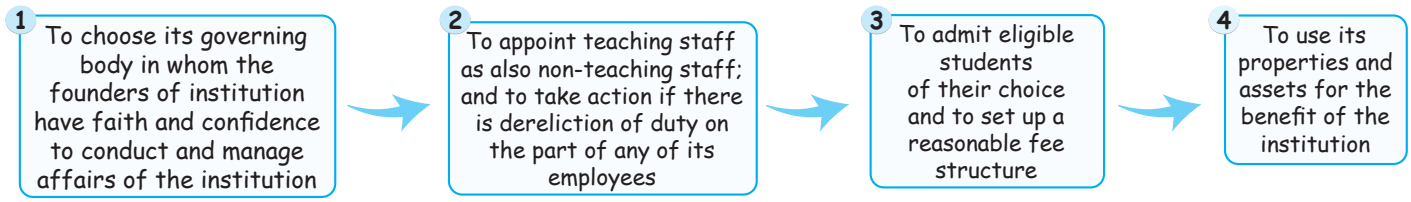

1
To choose its governing body in whom the founders of institution have faith and confidence to conduct and manage affairs of the institution
2
To appoint teaching staff as also non-teaching staff; and to take action if there is dereliction of duty on the part of any of its employees
3
To admit eligible students of their choice and to set up a reasonable fee structure
4
To use its properties and assets for the benefit of the institution

Fig. 10.23: The Rights of minorities

  - Regulatory measures are allowed to ensure educational integrity and uphold standards of excellence.
  - Oversight is necessary to guarantee efficient and effective management that aligns with the educational requirements of the institution.
  - State regulations can address the welfare of students and teachers, including establishing criteria for staff eligibility and qualifications.
  - Employment conditions for both teaching and non-teaching staff are subject to regulation to protect against exploitation or abuse.
  - The State may set syllabus and curriculum guidelines, which are considered to be within regulatory norms.
  - Such regulatory measures are not considered an infringement on the rights provided by Article 30(1).
- Provided they meet the criteria or qualifications set by the State, unaided minority educational institutions are free to choose their teachers/lecturers through any reasonable selection process.
- The provision of financial assistance by the State does not change the fundamental identity and purpose of minority educational institutions. The State may set terms to guarantee the correct use of this aid but must do so without diminishing or compromising the rights established under Article 30(1).

Case for Aligarh Muslim University: The minority status of Aligarh Muslim University (AMU) in India has been a subject of legal scrutiny and various court observations. The issue revolves around whether AMU qualifies as a minority institution. Different courts have provided different perspectives on this matter.

Supreme Court of India: In the case of Azeez Basha vs. Union of India (1967), the Supreme Court held that AMU was not a minority institution. The court stated that AMU was set up by an Act of Parliament and did not have a distinct religion.

However, in a subsequent case, T.M.A. Pai Foundation vs. State of Karnataka (2002), the Supreme Court recognized that minority institutions, including those based on religion or language, have the right to administer their affairs.

Allahabad High Court: In the S Farid Ahmed vs. State of U.P. (1968), the Allahabad High Court held that AMU was not a minority institution as it was not established for the benefit of Muslims alone but for the benefit of people of India.

AMU Amendment Act, 1981: The controversy around AMU's minority status led to the AMU Amendment Act, 1981, which explicitly granted AMU the status of a minority institution. This amendment aimed to override the Supreme Court's decision in Azeez Basha case.

2006 Judgment - Rakesh Prakash vs. State of UP: In the case of Rakesh Prakash vs. State of U.P. (2006), the Allahabad High Court upheld the minority status of AMU based on the 1981 amendment. The court emphasized that AMU had been established by Muslims and continued to be administered by them.

2016 Judgment - Tezpur University vs. State of Assam: In the case of Tezpur University vs. State of Assam (2016), the Supreme Court observed that AMU was not a minority institution. The court reiterated the 1967 Azeez Basha judgment and stated that AMU was not established by Muslims but by an Act of Parliament.

National Commission for Minority Educational Institutions (NCMEI): The NCMEI has, at times, recognized AMU as a minority institution based on its interpretation of the relevant laws and considering the university's historical background.

Conclusion: The issue of AMU's minority status has seen varying interpretations by different courts and authorities. While some judgments have recognized its minority status, others have held otherwise. The legal landscape surrounding this matter remains complex and subject to evolving interpretations.

Case for Jamia Millia Islamia University: Jamia Millia Islamia (JMI) is a central university located in New Delhi, India. The issue of its minority status has been a subject of legal debates and court observations.

Historical Background: Jamia Millia Islamia was established in 1920 by prominent Muslim leaders during the Khilafat Movement. It was founded with the objective of promoting education and social upliftment among Muslims in India.

2006 Judgment - Dr. D. Vijay Anand vs. Jamia Millia Islamia:

In the case of Dr. D. Vijay Anand vs. Jamia Millia Islamia (2006), the Delhi High Court observed that Jamia Millia Islamia was not a minority institution. The court stated that Jamia was set up by an Act of Parliament and did not have a distinct religious character.

Jamia Millia Islamia Act, 1988: The Jamia Millia Islamia Act, 1988, granted the university the status of a central university. The Act did not explicitly mention the minority status of Jamia.

Jamia Millia Islamia Act, 1988: The Jamia Millia Islamia Act, 1988, granted the university the status of a central university. The Act did not explicitly mention the minority status of Jamia.

2011 National Commission for Minority Educational Institutions (NCMEI) Recognition: In 2011, the NCMEI granted minority status to Jamia Millia Islamia. The commission considered the historical background of the university's founding during the Khilafat Movement and its association with the Muslim community.

2011 Delhi High Court Judgment - Anwar Jamal vs. NCMEI: In the case of Anwar Jamal vs. NCMEI (2011), the Delhi High Court set aside the NCMEI's order granting minority status to Jamia. The court held that the NCMEI had exceeded its jurisdiction, and the issue of minority status was beyond its purview.

2012 Supreme Court Observation - Azeez Basha vs. Union of India: In the case of Azeez Basha vs. Union of India (2012), the Supreme Court observed that the question of minority status for educational institutions should be decided on a case-to-case basis.

Current Status: The issue of Jamia Millia Islamia's minority status remains a matter of legal debate. The university continues to operate as a central university.

PRESENT POSITION OF RIGHT TO PROPERTY

The right to property in India has undergone significant changes since the inception of the Constitution. Originally, it was a fundamental right, but now it is a constitutional right, not a fundamental one.

Original Status

- **Fundamental Right:** Initially, the right to property was among the seven fundamental rights under Part III of the Constitution, addressed by Article 19(1)(f) and Article 31.
- **Article 19(1)(f):** It guaranteed every citizen the right to acquire, hold, and dispose of property.
- **Article 31:** It assured every person, citizen or not, protection against property deprivation, subject to lawful authority. It also set conditions for state acquisition or requisition of property: for public purpose and with compensation.

Controversies and Amendments

- **Source of Disputes:** This right caused frequent confrontations between the Supreme Court and

Parliament, resulting in numerous amendments (1st, 4th, 7th, 25th, 39th, 40th, 42nd) to mitigate the impact of court judgments and protect certain laws from being challenged on the basis of fundamental rights.

- **Issues of Compensation:** A major legal contention was the state's obligation to compensate for the acquisition or requisition of private property.

44th Amendment Act of 1978

- **Abolition as Fundamental Right:** The 44th Amendment removed the right to property from the list of fundamental rights by repealing Article 19(1)(f) and Article 31.
- **Article 300A Introduction:** A new Article 300A was inserted in Part XII, ensuring that no person shall be deprived of their property except by authority of law.
- **Current Status:** The right to property remains a constitutional right but not a fundamental one. It's not part of the Constitution's basic structure.

Implications of Current Status

- **Regulation by Parliament:** The right can be regulated, curtailed, or modified by ordinary law without needing a constitutional amendment.
- **Protection Against Executive Action:** It offers protection against executive actions but not against legislative ones.
- **Legal Recourse:** In case of violation, one cannot directly approach the Supreme Court under Article 32 but can approach the High Court under Article 226.
- **No Guaranteed Compensation:** There is no inherent right to compensation for state acquisition or requisition of private property.

Exceptions in Part III

- **Article 30:** It guarantees compensation when state acquires property from a minority educational institution (added by the 44th Amendment Act of 1978).
- **Article 31A:** It ensures compensation for land under personal cultivation within statutory limits (added by the 17th Amendment Act of 1964).

The transformation of the right to property from a fundamental right to a constitutional right reflects a shift in the balance between individual property rights and the needs of the public and state. While it offers certain protections, it also allows more flexibility for the state in matters of property regulation, aligning with broader developmental and societal goals.

EXCEPTIONS TO FUNDAMENTAL RIGHTS

The provisions mentioned relate to Articles 31A, 31B, and 31C of the Indian Constitution, each dealing with the protection of certain laws from judicial review based on contravention of Fundamental Rights. **Detailed explanation of these articles are:**

- **Article 31A:**
  - This article protects specific laws related to land reforms and other economic measures from being challenged on the grounds of violating the fundamental rights under Articles 14 (equality before the law) and 19 (protection of certain rights regarding freedom of speech, etc.).
  - It covers laws dealing with the acquisition of estates, taking over property management by the state, amalgamation of corporations, modification of rights in corporations, and modification of mining leases.
  - However, for a state law to enjoy this immunity, it must be reserved for the President's consideration and receive his assent.
  - It also mandates compensation at market value for land acquisitions within certain limits.
- **Article 31B:**
  - This article provides a broader protection than Article 31A. It safeguards any laws in the Ninth Schedule of the Constitution from being invalidated for infringing any fundamental rights.
  - Initially, the Ninth Schedule contained only 13 acts, but as of 2016, it includes 282 acts, primarily related to land reforms and the abolition of the zamindari system.
  - However, the Supreme Court in the **I.R. Coelho case (2007)** held that laws in the Ninth Schedule post-April 24, 1973 (the date of the Kesavananda Bharati judgment introducing the 'basic structure' doctrine), could be subject to judicial review if they violate fundamental rights or the constitution's basic structure.
- **Article 31C:**
  - Inserted by the 25th Amendment Act of 1971, Article 31C initially had two provisions. The first stated that laws implementing certain directive principles, especially those in Article 39(b) and (c), cannot be voided for contravening Articles 14 and 19.
  - The second provision, which prevented any law containing a declaration for implementing such policies from being questioned in court, was declared unconstitutional in the Kesavananda Bharati case (1973) as it violated the basic structure of the Constitution.
  - The 42nd Amendment Act of 1976 tried to expand this protection to any law implementing any directive principles, but this extension was struck down in the Minerva Mills case (1980).

These articles illustrate the complex balance between protecting certain state policies, particularly in land and economic reform, and maintaining the supremacy of fundamental rights and the constitution's basic structure.

ARTICLE 32: REMEDIES FOR ENFORCEMENT OF RIGHTS CONFERRED BY THIS PART

Article 32 of the Indian Constitution, often referred to as the **"heart and soul"** by Dr. B.R. Ambedkar, stands as a crucial constitutional provision providing an efficient mechanism for enforcing rights in case of a breach. It serves as the guardian of Fundamental Rights, offering both a theoretical declaration and a practical avenue for redressal.

The Supreme Court has ruled that Article 32 is a **basic feature of the Constitution.** Hence, it cannot be abridged or taken away even by way of an amendment to the Constitution. It contains the following four provisions:

(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part

(3) Without prejudice to the powers conferred on the Supreme Court by clause (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2). But no such provision has been made so far, only the Supreme Court and the High Courts can issue writs.

(4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

Designed to protect and uphold Fundamental Rights, **Article 32 allows direct access to the Supreme Court** for individuals seeking redressal for infringements. This accessibility makes the right to constitutional remedies enforceable and practical.

Incorporating the concept of **judicial review,** central to democracy, Article 32 empowers the judiciary to examine legislative and executive actions, preventing any infringement on Constitution-guaranteed rights. This power ensures a system of checks and balances crucial for democratic functioning.

Article 32 acts as a deterrent against arbitrary state action, signaling that any infringement of Fundamental Rights can be legally challenged in the Supreme Court. Even during emergencies, when some rights can be suspended, the right to move the Supreme Court under Article 32 remains intact, showcasing the resilience of fundamental rights.

Writs and Their Uses

The Indian Constitution empowers the **Supreme Court (Article 32)** and **High Courts (Article 226)** to issue writs for the enforcement of the fundamental rights of individuals. But there are some differences in the writ jurisdiction of the Supreme Court and the High Courts:

- **Enforcement:** The Supreme Court has a narrower writ jurisdiction as it can issue writs only to enforce fundamental rights whereas a High Court can issue writs for the enforcement of fundamental rights and of any other ordinary legal right.
- **Territorial Jurisdiction:** The Supreme Court has a wider territorial jurisdiction as it can issue writs against a person or an authority throughout the territory of India whereas a State High Court can issue writs against a person or authority situated in that particular state. A High Court can issue writs outside its territorial jurisdiction if the cause of action arises within its territorial jurisdiction.
- **Discretion:** The Supreme Court may not refuse to exercise its writ jurisdiction as the remedy under Article 32 is in itself a fundamental right. Hence, the Supreme Court is the defender and guarantor of the fundamental rights. On the other hand, a High Court may refuse to exercise its writ jurisdiction under Article 226.

There are Five Types of Writs

- **Habeas Corpus:**
  - Meaning: **"To have the body of."**
  - Use: It is used to release a person who has been unlawfully detained or imprisoned. Through this writ, the court orders the detaining authority to bring the detained person before the court to determine the legality of detention. Not issued when detention is lawful, contempt of court or legislature, by a competent court, or outside court jurisdiction.
- **Mandamus:**
  - Meaning: **"We command."**
  - Use: It commands a public authority to perform a public or statutory duty. This writ is issued when a lower court, a government officer, corporation, or any public authority has failed or refused to fulfill its duty. Not issued against private individuals, for non-statutory departmental instructions, discretionary duties, contractual obligations, the President, State Governors, or Chief Justice acting judicially.
- **Prohibition:**
  - Meaning: **"To forbid."**
  - Use: It is issued by a higher court to a lower court or tribunal to prevent the latter from exceeding its jurisdiction or usurping a jurisdiction it does not possess. The writ of prohibition is only issued against judicial and quasi-judicial authorities. Not available against administrative authorities, legislative bodies, private individuals, or bodies.
- **Certiorari:**
  - Meaning: **"To be certified"** or **"To be informed."**

- Use: It is used by a higher court to review the decision of a lower court or tribunal. It can be issued to quash a decision that has been made without jurisdiction or in violation of the rules of natural justice. Initially against judicial and quasi-judicial authorities, it was extended to administrative authorities in 1991. Not available against legislative bodies, private individuals, or bodies.

- **Quo Warranto:**
  - Meaning: **"By what warrant?"**
  - Use: This writ is used to challenge the legality of a person's claim to a public office. It restrains the person from acting in an office to which he/she is not entitled and asks them to show by what authority they hold the office. Applicable to substantive public offices of a permanent character created by statute or the Constitution.It can be sought by any interested person, not necessarily the aggrieved person.

These writs serve as important tools for the judicial review of administrative actions and for the protection of individual rights against arbitrary governmental actions. They are instruments that ensure the rule of law is maintained and that any abuse of power is checked.

ARTICLE 33-35

Articles 33 to 35 of the Indian Constitution fall under the section of Fundamental Rights, but they deal specifically with the power of the Parliament to modify the application of these rights in certain instances and to implement these rights effectively.

Article 33: Power of Parliament To Modify The Rights Conferred By This Part in Their Application To Forces, etc.

Article 33 of the Indian Constitution grants the Parliament the authority to restrict or abolish the Fundamental Rights of members of the armed forces, paramilitary forces, police forces, intelligence agencies, and similar organizations. This provision is designed to ensure the efficient performance of their duties and to maintain discipline within these forces.

The term 'members of the armed forces' also covers the non-combatant employees of the forces like cooks, chowkidars, bookmakers, mechanics, barbers, carpenters, etc.

Key Points of Article 33 Include

- **Exclusive Parliamentary Power:** Only the Parliament (not state legislatures) can legislate under Article 33. This power enables the Parliament to enact laws that might limit the fundamental rights of the aforementioned forces.
- **Laws Beyond Judicial Review:** Laws made under Article 33 are immune from being challenged in courts on the grounds of infringing Fundamental Rights.
- **Enacted Legislations:** The Parliament has passed various laws like the Army Act (1950), Navy Act (1950), Air Force Act (1950), and others, which impose restrictions on the rights of these forces, including freedom of speech, association, and assembly.

Reason For Insertion of This Article

Article 33 of the Indian Constitution plays a critical role in balancing the fundamental rights of certain categories of personnel with the unique demands and disciplines of their respective services.

The Primary Reasons For Including Article 33 Are

- **Maintaining Discipline and Order:** The nature of duties performed by the armed forces, paramilitary forces, police forces, and intelligence agencies necessitates a high degree of discipline and order. Article 33 allows for the restriction or abrogation of certain fundamental rights to ensure that these forces operate under a framework conducive to their roles.
- **Efficient Functioning:** For the effective functioning of these forces, it is often necessary to place restrictions on certain rights, such as the freedom of speech and expression or the right to form associations. These restrictions help prevent any actions that might compromise the operational integrity or discipline of these forces.
- **National Security and Sovereignty:** Members of the armed forces and similar organizations play a crucial role in protecting national security and sovereignty. Article 33 enables the creation of a legal environment that supports their ability to perform these duties without the complications that could arise if all fundamental rights were applicable in the same way as they are to ordinary citizens.
- **Special Operational Requirements:** The operational requirements of these forces are distinct from civilian entities, often involving sensitive information and activities critical to national interest. The restrictions enabled by Article 33 help safeguard against any breaches of security or protocol that might arise from the unrestricted exercise of certain fundamental rights.
- **Legal Precedent and International Practices:** The concept of special provisions for military and similar forces is not unique to India. Many countries have similar legal frameworks to ensure that their defense and security forces can function effectively while maintaining strict discipline and secrecy.

In essence, Article 33 acknowledges the unique nature of the duties performed by certain forces and provides a constitutional mechanism to ensure that their functioning is not impeded by the standard application of Fundamental Rights. This allows these forces to operate in a manner that is both effective and aligned with the broader interests of national security and public order.

Article 34: Restriction on Rights Conferred By This Part While Martial Law is in Force in any Area

Article 34 provides for the restrictions on fundamental rights while martial law is in force in any area within the territory of India. It empowers the Parliament to indemnify any government servant or any other person for any act done by him in connection with the maintenance or restoration of order in any area where martial law was in force. The Parliament can also validate any sentence passed, punishment inflicted, forfeiture ordered or other act done under martial law in such an area.

The Key Points of Article 34 Are

- **Restrictions on Fundamental Rights:** Article 34 allows for the imposition of restrictions on fundamental rights when martial law is in force in an area. This is to ensure order and public safety under extraordinary circumstances.
- **Indemnification Powers:** It empowers the Parliament to indemnify government servants or others for acts done in connection with the maintenance or restoration of order where martial law is in effect. This means that actions taken during martial law, such as sentences, punishments, or forfeitures, can be legally validated and are protected from legal challenges.
- **Non-Challengeability:** Any Act of Indemnity passed by Parliament under Article 34 is immune from being challenged in courts on the grounds of contravention of fundamental rights.
- **Martial Law Concept:** Borrowed from English common law, 'martial law' in India refers to a situation where the military takes over civil administration to maintain or restore order, especially in times of war, invasion, insurrection, or riot. It is different from military law, which is applicable only to armed forces personnel.
- **Constitutional Basis:** While the Constitution does not explicitly define 'martial law' or expressly authorize the executive to declare it, Article 34 implicitly allows for its declaration. Under martial law, military authorities can exercise extraordinary powers over civilians.
- **Supreme Court's Stance:** The Supreme Court of India has clarified that declaring martial law does not automatically suspend the writ of habeas corpus, a legal instrument to prevent unlawful detention.
- **Difference from National Emergency:** Martial law under Article 34 is distinct from a national emergency declared under Article 352. A national emergency affects the entire country and alters the balance of power between the Centre and states, while martial law is localized and specifically pertains to the suspension of civil authority in favour of military control in a particular area.

Below Table Outlining The Differences Between Martial Law and National Emergency

Aspect	Martial Law	National Emergency
Effect on Rights	Affects only Fundamental Rights	Affects not only Fundamental Rights but also Centre-state relations, distribution of revenues, legislative powers, and may extend the tenure of the Parliament.
Government and Courts	Suspends the government and ordinary law courts	Continues the government and ordinary law courts
Grounds for Imposition	Imposed to restore the breakdown of law and order	Can be imposed only on three grounds: war, external aggression, or armed rebellion
Geographical Scope	Imposed in some specific area of the country	Imposed either in the whole country or in any part of it
Constitutional Provision	No specific provision in the Constitution (implicit)	Specific and detailed provision in the Constitution (explicit)

Despite Its Intended Role, Article 34 Has Faced Criticism

- **Potential for Abuse:** The broad powers granted under martial law have the potential for abuse. Without stringent checks, there's a risk of human rights violations.
- **Lack of Clear Definition:** The absence of a clear definition of 'martial law' in the Constitution can lead to ambiguity and potential misuse.
- **Concentration of Power:** Vesting military authorities with extensive control over civilians during martial law can lead to a significant power imbalance.
- **Impact on Civil Liberties:** The suspension of fundamental rights under martial law can lead to significant infringements on civil liberties.

While Article 34 is a necessary provision for ensuring public order in extraordinary situations, it must be applied with utmost caution and responsibility. The provision recognizes

the delicate balance between the need for exceptional measures during crises and the protection of fundamental democratic principles. The existence of such a constitutional mechanism underscores the preparedness of the legal system to address extreme challenges while maintaining a commitment to the rule of law.

Article 35: Legislation To Give Effect To The Provisions of This Part

Article 35 of the Indian Constitution emphasizes the exclusive power of the Parliament to legislate on certain matters pertaining to Fundamental Rights, ensuring uniformity across India. This article restricts state legislatures from enacting laws on these specified areas.

Purpose

- **Uniformity in Fundamental Rights:** It ensures consistent application and enforcement of specific fundamental rights across all states in India.
- **Centralization of Authority:** It places the responsibility solely with the Parliament to legislate on these sensitive areas.

Key Provisions

- **Exclusive Legislative Power of Parliament**
  - State Legislature Restrictions: State legislatures are explicitly prohibited from making laws on the matters listed under Article 35.
  - Matters Under Parliament's Jurisdiction:
    - **Article 16:** Laws prescribing residence as a condition for employment in state/union territory/local authority.
    - **Article 32:** Empowering courts, other than the Supreme Court and High Courts, to issue writs for enforcing fundamental rights.
    - **Article 33:** Restricting or abolishing fundamental rights for armed forces and police.
    - **Article 34:** Indemnification for actions during martial law.
- **Prescribing Punishment for Infringement of Fundamental Rights**
  - Mandatory Law Making by Parliament:
    - **Article 17:** Laws against untouchability.
    - **Article 23:** Laws against human trafficking and forced labor.
  - Obligation on Parliament: To enact laws prescribing punishments for the violation of these rights.
- **Continuity of Pre-Existing Laws**
  - **Validity of Existing Laws:** Laws existing at the commencement of the Constitution continue until altered or repealed by the Parliament.
- **Extended Competence**
  - **Overriding State List:** Article 35 authorizes the Parliament to legislate on certain matters that might typically fall under state jurisdiction, highlighting the importance of a unified approach in these areas.

Article 35 is a critical component of the Indian Constitution, designed to maintain a uniform standard for fundamental rights across the nation. By centralizing legislative power in the hands of the Parliament for specific rights and matters, it ensures that fundamental rights are uniformly understood, implemented, and enforced throughout India. This approach reflects the balance between federal and centralized governance in the Indian constitutional framework.

Article	Purpose	Key Points
Article 33	Restrict or Modify Rights for Armed Forces and Others	❑ Allows the Parliament to modify the application of fundamental rights for members of the armed forces, police, and similar services. ❑ Ensures discipline and proper discharge of duties in these forces. ❑ Recognizes the unique nature and requirements of armed forces and similar services.
Article 34	Indemnity during Martial Law	❑ Provides legal protection (indemnity) for actions taken by government officials during martial law in any area. ❑ Applies to acts done to restore order during civil unrest or insurrection. ❑ Ensures that necessary actions during such emergencies are not challenged in courts later.
Article 35	Parliament's Exclusive Power to Legislate on Certain Matters	❑ Grants exclusive power to the Parliament to make laws regarding certain aspects of fundamental rights. ❑ Prevents state legislatures from making laws on these matters for uniformity across India. ❑ Includes matters like defining punishment for untouchability and trafficking, prescribing residence for employment, and empowering courts for rights enforcement.

CRITICISM OF FUNDAMENTAL RIGHTS

Criticism of fundamental rights in the Indian Constitution often revolves around several key points, each highlighting perceived limitations or issues in their implementation and scope.

Some of Them are as Follows:

- **Lack of Social and Economic Rights:** Fundamental rights primarily focus on civil and political rights, with less emphasis on socio-economic rights like the right to work, education, or health. For example, the right to education was added much later (86th Amendment, 2002), highlighting initial gaps in addressing social rights.
- **Suspension during Emergency:**
  - **Article 359** allows the suspension of fundamental rights during a national emergency. This provision was controversially used during the Emergency (1975-1977), leading to widespread violations of civil liberties.
- **Restrictive Nature of Some Rights:**
  - Certain rights come with inherent restrictions in the interest of public order, morality, and health. For instance, the freedom of speech and expression is not absolute and can be restricted to maintain public order, affecting its practical applicability.
- **Limited Reach and Enforcement:**
  - Despite being guaranteed by the Constitution, the enforcement of fundamental rights can be uneven, especially in rural or marginalized communities. For instance, cases of discrimination and untouchability still exist, despite being prohibited under Article 17.
- **Absence of Universal Application:**
  - Certain fundamental rights, like **cultural and educational rights** given under Articles 29 and 30, are specifically designed for minorities, leading to debates about unequal privileges and their impact on social harmony.
- **Conflict with Directive Principles:**
  - Often, there is a conflict between fundamental rights and the Directive Principles of State Policy. For example, the right to property was a fundamental right but was later removed to facilitate land reforms as per the Directive Principles.
- **Ambiguity in Interpretation:**
  - The broad and ambiguous wording of some rights leads to varying interpretations. The interpretation of what constitutes 'public order' or 'morality' for limiting freedom of speech can vary, leading to inconsistent judicial decisions.
- **Economic and Social Constraints:**
  - The effective realization of fundamental rights is often hampered by economic and social constraints. For example, the right against exploitation is hindered by the widespread poverty and lack of education, which forces many into exploitative labor conditions.
- **Implementation Issues:**
  - There is often a gap between the legal provision of rights and their actual implementation on the ground. For instance, the right to equality is challenged by pervasive caste and gender discrimination in various spheres of life.
- **Overemphasis on Individual Rights:**
  - Some critics argue that the Constitution overemphasizes individual rights at the expense of community welfare. This can sometimes lead to conflicts where individual rights clash with collective interests.

Rights Outside Part III

The Indian Constitution, while primarily known for its Fundamental Rights listed in Part III, also enshrines other important rights in its different parts. These rights, though justiciable, differ from the Fundamental Rights in their nature and the remedies available upon their violation. These are constitutional or legal rights, not classified as Fundamental Rights. They are part of various other sections of the Constitution. Some of them are:

- **Article 265 (Part XII):** This article states that no tax shall be levied or collected without the authority of law, ensuring that taxation is done legally and transparently.
- **Article 300-A (Part XII):** It provides that no person shall be deprived of their property except by the authority of law. This article was added to the Constitution after the right to property was removed from the list of Fundamental Rights.
- **Article 301 (Part XIII):** This guarantees the freedom of trade, commerce, and intercourse throughout the territory of India, fostering a unified market and economic unity within the country.

Justiciability and Enforcement

- While these rights are justiciable (meaning they can be enforced in courts), the process for their enforcement differs from that of Fundamental Rights.

- **Enforcement of Fundamental Rights:** In case of a violation of Fundamental Rights, the aggrieved person can directly approach the Supreme Court under Article 32, which itself is a Fundamental Right, providing an effective and expedient remedy.
- **Enforcement of Rights Outside Part III:** If there is a violation of these constitutional rights, the aggrieved individual cannot use Article 32. Instead, they must approach the High Court under Article 226 or file an ordinary lawsuit. Article 226 empowers High Courts to issue certain writs for the enforcement of these rights and offers a broader scope compared to Article 32.

CONCLUSION

Fundamental rights are basic to civic life under constitutional polity and have been recognized as part of the basic structure of the constitution. Active citizens, vigilant media, and an independent judiciary are needed to ensure the protections are meaningful. These rights, evolving through constitutional amendments, reflect India's dedication to justice and equality. Essentially, they are the cornerstone of Indian democracy, empowering citizens and fostering inclusive, sustainable development.

Directive Principles of State Policy (DPSP)

11

INTRODUCTION

The Directive Principles of State Policy, enshrined in Part IV of the Indian Constitution (Articles 36-51), serve as non-enforceable but guiding principles for the government. They aim to direct the government towards establishing a just, equitable society by influencing policy-making and governance to enhance social, economic, and political welfare.

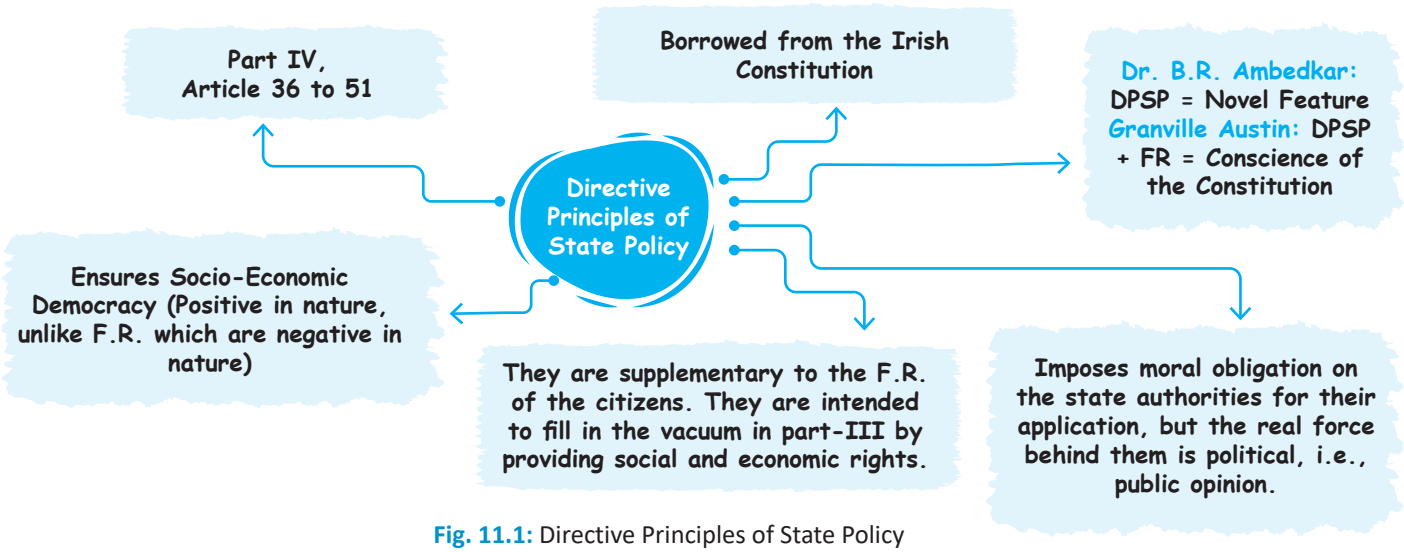

Part IV, Article 36 to 51
Borrowed from the Irish Constitution
Dr. B.R. Ambedkar: DPSP = Novel Feature
Granville Austin: DPSP + FR = Conscience of the Constitution
Directive Principles of State Policy
Ensures Socio-Economic Democracy (Positive in nature, unlike F.R. which are negative in nature)
They are supplementary to the F.R. of the citizens. They are intended to fill in the vacuum in part-III by providing social and economic rights.
Imposes moral obligation on the state authorities for their application, but the real force behind them is political, i.e., public opinion.

Fig. 11.1: Directive Principles of State Policy

Features of DPSP

- **Resemble with Instrument of Instructions:**
  - **Dr. B.R. Ambedkar** aptly noted that "the Directive Principles are like the instrument of instructions," which were issued to the Governor-General and Governors of the British-India by the British Government under the **Government of India Act of 1935**. The key difference is that these principles now serve as instructions to the legislature and the executive.
- **Promote comprehensive Goals for a Democratic State:**
  - The Directive Principles encompass a comprehensive **economic, social, and political** program for a modern democratic State.
  - Their aim is to realize the **ideals of justice, liberty, equality, and fraternity** as outlined in the **Preamble** to the Constitution. They embody the concept of a **'Welfare State,'** which is distinct from the **'Police State'** of the colonial era. Essentially, they seek to establish **economic and social democracy** in the country.
- **Non-Justiciable Nature:**
  - Directive Principles are **non-justiciable,** meaning they are not legally enforceable by the courts for their violation. However, the Constitution **(Article 37)** emphasizes that these principles are fundamental in the governance of the country, and it shall be the duty of the State to apply these principles in making laws.
- **Constitutional Validity Determination:**

> Rights that cannot be challenged in any court or protected by judicial review are called **non-justiciable rights.**

  - Despite being non-justiciable, the Directive Principles assist the courts in examining and determining the constitutional validity of a law.
  - In the **Minerva Mills case**, the Supreme Court held that there is a need to maintain a delicate balance between fundamental rights and DPSPs.
  - The Supreme Court has consistently ruled that when assessing the constitutionality of any law, if the law aligns with a Directive Principle, it **may be deemed 'reasonable'** concerning **Article 14** (equality before the law) or **Article 19** (six freedoms), thereby saving such a law from unconstitutionality.
- **Article 36: Definition-** "The State" has the same meaning as in Part III. **As per Part III Article 12,** "The State" includes the Government and Parliament of India, the Government and the Legislature of each of the States, and all local or other authorities within the territory of India or under the control of the Government of India.

- **Article 37: Application of the principles contained in this Part**—The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country, and it shall be the duty of the State to apply these principles in making laws.
- In our legal system, DPSP serves as the cornerstone for just governance, ensuring the integration of socio-economic justice into policies. Though non-justiciable, their moral imperative drives ethical governance.
- Despite lacking legal enforceability, DPSP emphasizes the State's responsibility to convert principles into actions, directing resources and efforts to promote justice, equality, and opportunities for all citizens.

For Example:

- Every year, many children in India are forced into child labour due to poverty, depriving them of an education. Although initially thought unfeasible, universal primary education became a fundamental right (Article 21A) as progress was made. Now, primary education is a fundamental right (Article 21A), symbolising hope for children of age 6 yrs to 14 yrs.

While **Part III (Fundamental Rights)** guaranteed **political democracy**, **Part IV (DPSPs)** ensured **social and economic democracy**, bridging the gaps for marginalized sections. This pivotal constitutional provision mandates the State to uplift the underprivileged, fostering an **inclusive society** where every citizen has equal opportunities, marking a crucial step towards a more just and equitable nation.

Classification of Directive Principles of State Policy

- **Articles 38-51 in Part IV** of the Indian Constitution embody the essence of the nation's vision. **Dr. Ambedkar** hailed these principles as **"novel features,"** highlighting their significance. The Directive Principles, coupled with Fundamental Rights, encapsulate the core philosophy and soul of the Constitution.
- Political scholar **Granville Austin** aptly termed them the **"Conscience of the Constitution."** These principles serve as the moral compass guiding India towards a just, equitable, and enlightened society, reinforcing the nation's commitment to its people's welfare and progress.

Socialist Principles

Definition:

Socialist principles are the core beliefs and values of socialism, a political, social, and economic system that advocates for **collective ownership of the means of production and distribution of goods and services**. Socialists believe that this system is more just and equitable than capitalism, which is based on private ownership of the means of production.

Article 38	To promote the **welfare of the people** by securing a social order permeated by **justice–social, economic, and political** and to **minimize inequalities in income, status, facilities, and opportunities.** To strive for balanced regional growth.
Article 39	**To Secure Citizens:** (a) Right to adequate means of livelihood for all citizens. (b) Equitable distribution of material resources of the community for the common good. (c) Prevention of concentration of wealth and means of production. (d) Equal pay for equal work for both men and women. (e) Preservation of the health and strength of workers and children against forcible abuse. (f) Opportunities for the healthy development of children. **Note:** Constitution of India implicitly prohibits **child labour** i.e. "tender age of children should not be abused".
Article 39A	To promote equal justice and **free legal aid** through suitable legislation to the poor and other socially disadvantaged classes.
Article 41	To secure the **right to work, to education** and **to public assistance** in cases of unemployment, old age, sickness and disablement.
Article 42	Make provision for **just and humane conditions of work** and for **maternity relief.**
Article 43 (Both a socialist and Gandhian Principle)	Secure a living wage, a **decent standard of living** and **full enjoyment of leisure** and social and cultural opportunities for all workers. The State shall endeavour to **promote cottage industries** on an individual or cooperative basis in rural areas.

Article 43A	Take steps to secure the **participation of workers in the management of industries.**
Article 47 (Both a socialist and Gandhian Principle)	Raise the level of **nutrition and the standard of living** of people and improves **public health**.

Gandhian Principles:

Definition: These principles draw their essence from Gandhian ideology, encapsulating the essence of Gandhi's reconstruction program during the national movement. Grounded in the principles of Ahimsa (Non-violence), Swaraj (Good governance), Sarvodaya (upliftment of all), and Swavlamban (self-reliance), they serve as a tribute to Gandhi's vision.

Article 40	It requires the State to organize **village panchayats** and endow them with the necessary powers and authority to enable them to function as units of self-government
Article 43	It requires the State to promote **Cottage industries** on an individual or cooperative basis in rural areas.
Article 43B	It requires the State to promote voluntary formation, autonomous functioning, democratic control, and professional management of **co-operative societies.**
Article 46	It requires the State to promote the **educational and economic interests of SCs, STs, and other weaker sections** of society and to protect them from **social injustice and exploitation.**
Article 47 (Both a socialist and Gandhian Principle)	It requires State to prohibit the **consumption of intoxicating drinks and drugs** which are injurious to health.
Article 48	It requires State to **prohibit the slaughter of cows, calves and other milch** and **draught cattle** and to **improve their breeds.**

Liberal-Intellectual Principles

Definition: Liberal principles are the core beliefs and values of liberalism, a political and moral philosophy based on individual liberty, political equality, and the rule of law. Liberals believe that governments should be limited in scope and power and that individuals should be free to live their lives as they see fit, as long as they do not harm others.

Article 44	The State shall endeavour to secure the citizens a **Uniform Civil Code** throughout the territory of India
Article 45	Provides **early childhood care** and education for all children until they reach the age of **six years**.
Article 48	Organise **Agriculture and Animal Husbandry** on modern and scientific lines.
Article 48A	The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.
Article 49	Protect monuments, places, and objects of artistic or historic interest which are declared to be of national importance.
Article 50	Separates the **judiciary from the executive** in the public services of the State.
Article 51	(a) Promote international peace and security. (b) Maintain just and honorable relations between nations. (c) Foster respect for international law and treaty obligations in the dealings of organised people with one another. (d) Encourage settlement of international disputes by arbitration.

Directive Principles Added Through Constitutional Amendment

Constitutional Amendments	Article Numbers	Article
42nd Amendment Act, 1976	Article 39(f)	Opportunities for the healthy development of children
	Article 39A	Promote equal justice and free legal aid to the poor
	Article 43A	To take steps to secure the participation of workers in the management of industries
	Article 48A	To protect and improve the environment and to safeguard forests and wildlife
44th Amendment Act, 1978	Article 38	To minimize the inequalities in income, and endeavour to eliminate inequalities in status, facilities, and opportunities.
86th Amendment Act, 2002	Article 45	Provide early childhood care and education for all children until they complete the age of six years. (**Note:** The 86th Amendment Act of 2002 changed the subject matter of this article and made elementary education a fundamental right under Article 21 A.)
97th Amendment Act, 2011	Article 43B	Promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies.

Directive Principles Outside Part IV

In addition to the Directive Principles enshrined in Part IV of the Indian Constitution, there are also Directives scattered throughout other parts of the Constitution:

IGNITE YOUR MIND

Indian constitutional fore-fathers did not make mandatory for the State to implement all the provisions of DPSP. Can you think of any reasons, as to why DPSPs were not made mandatorily enforceable by the state?

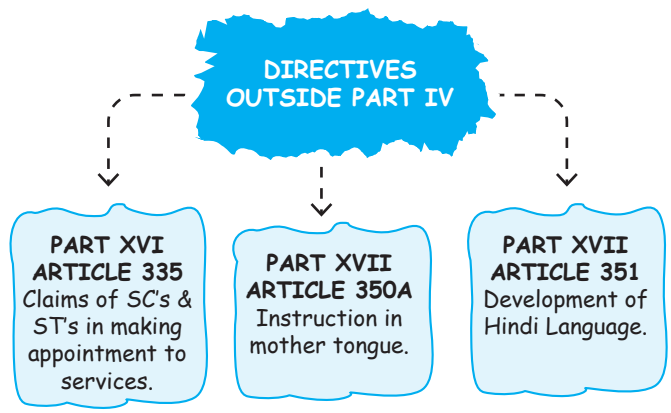


Fig. 11.5: Directives Outside Part IV

- **Claims of Scheduled Castes and Scheduled Tribes (Article 335)**
  - It is found in Part XVI, mandates that the government must consider the claims of Scheduled Castes (SCs) and Scheduled Tribes (STs) when making appointments to public services and posts. This directive aims to ensure equitable representation and promote social justice.
- **Instruction in Mother Tongue (Article 350-A)**
  - It is located in Part XVII, and directs states and local authorities to provide adequate facilities for instruction in the mother tongue at the primary education level for children belonging to linguistic minority groups. This principle safeguards the linguistic rights of minority communities and promotes cultural preservation.
- **Development of the Hindi Language (Article 351)**
  - It is found in Part XVII, places a duty on the Union to promote the spread and development of the Hindi language, enabling it to serve as a unifying medium of expression for India's diverse cultural tapestry.

Significance of DPSPs

- **Complementing Fundamental Rights:** They serve as supplements to citizens' Fundamental Rights, filling gaps in Part III of the Constitution by addressing social and economic rights.
- **Oversight and Opposition's Role:** Directive principles enable the opposition to influence and scrutinise the government's actions. The Opposition can critique the ruling party based on its alignment with or deviation from the Directives.
- **Political, Economic, and Social Stability:** Directive principles ensure stability and continuity in domestic

and foreign policies across political, economic, and social domains, regardless of the ruling party's changes.

IGNITE YOUR MIND

Can the Directive Principles be meaningfully implemented without compromising the separation of powers or becoming mere political rhetoric? If so, how can we bridge the gap between aspirations and realities?

- **Evaluating Government Performance:** They act as a litmus test for assessing the government's performance. People can assess government policies and programs in light of these constitutional principles.
- **Common Political Guideline:** Regardless of its political ideology, a ruling party must acknowledge that these principles are meant to guide and inform its legislative and executive decisions, serving as a shared political manifesto.

The Directive Principles of State Policy (DPSP) in the Indian Constitution has faced various criticisms:

- **Not Legally Enforceable:** According to **Article 37**, Directive Principles are **non-enforceable**, i.e. lacking legal obligation. Despite their noble intentions, critics argue that they lack teeth, being mere lofty aspirations without practical implementation.

Scholar's Views:

- **T.T. Krishnamachari** called them as a **"veritable dustbin of sentiments attaching no value."**
- **K.C. Wheare** has described them as a **"manifesto of aims and aspirations''**
- **Sir Ivor Jennings** characterized them as **"pious aspirations."**

- **Illogically arranged:** The formulation of Directives suffers from vagueness and repetition. These principles lack proper classification and logical arrangement, leading to ambiguity in their interpretation and implementation. Addressing these concerns is vital to enhance the effectiveness and clarity of these guiding principles for a more streamlined and impactful governance.
- **Lack of consistency in the provisions:** Some modern rational principles like Separation of power, uniform civil code, etc. are combined with principles based purely on sentiments like an alcohol ban and ban on cow slaughter.
- **Constitutional Conflicts: K. Santhanam** has highlighted that the Directive Principles of State Policy can potentially lead to constitutional conflicts in various aspects of governance. These conflicts can arise:
  - **Between the Centre and the States:** The Centre can issue directives to the states regarding the implementation of these principles. In non-compliance, the Centre may take extreme measures to dismiss the state government.
  - **Between the President and the Prime Minister:** If the Prime Minister advocates for a bill in Parliament that violates the Directive Principles, the President, as the custodian of the Constitution, may reject the bill, emphasising the fundamental importance of these principles in the governance of the country.
  - **Between the Governor and the Chief Minister:** Similar constitutional conflicts can occur at the state level, where the Governor, representing the central government, may clash with the chief minister over matters related to the implementation of Directive Principles.
- **Outdated Fabian Socialism:**
  - According to **Sir Ivor Jennings**, the Directives in the Indian Constitution reflect 19th century English political philosophy. Part IV embodies **Fabian Socialism** without the socialist elements, suitable for mid-20th century India but potentially outdated in the 21st century.

In essence, these potential conflicts highlight the delicate balance between the principles laid out in the Directive Principles and the practical aspects of governance.

Government Efforts to Follow the Directives

Governments have diligently strived to shape a welfare state by translating the Directive Principles into actionable measures through enforceable legislation. This proactive approach signifies a commitment to social justice, equal opportunities, and overall well-being for all citizens.

Directive Principles	Policies	Details
Article 38	Income Tax Act,1961	To minimise the inequalities in income
Article 39	Land reform legislation such as Zamindari abolition, etc. Nationalisation of Insurance (1956) and leading fourteen commercial banks (1969). Mahatma Gandhi National Rural Employment Guarantee Act 2005 (MGNREGA).	To bring changes in the agrarian society and to improve the conditions of the rural masses. To utilise the financial resources for promoting the common good. To ensure livelihood opportunities for its citizens, particularly in rural areas.

Article 39 A	❑ The Legal Services Authorities Act (1987)	❑ To provide free and competent legal aid to the poor and to organise Lok Adalats for promoting equal justice.
Article 40	❑ 73rd Constitutional Amendment Act, 1992	❑ This decentralization of power empowers local communities, fostering grassroots democracy and enabling citizens to actively participate in shaping their own destinies.
Article 41	❑ National Social Assistance Programme ❑ Rights of Persons with Disabilities Act, 2016	❑ To promote the welfare measures to the people.
Article 42	❑ The Maternity Benefit Act (1961)	❑ To protect the interests of women workers.
Article 43 **Article 43B**	❑ Minimum Wages Act, 1948 ❑ Khadi and Village Industries Commission (KVIC) ❑ 97th Constitutional Amendment Act, 2011	❑ To promote Cottage industry. ❑ To provide legal status and protection to cooperative societies.
Article 45	❑ Early Child Care and Education (ECCE) under National Education Policy, 2020	❑ It aims to provide basic education to children, to prepare them for formal education from Grade 1 onwards.
Article 46	❑ Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989	❑ To protect the SCs and ST from social injustice and exploitation.
Article 47	❑ National Rural Health Mission ❑ Ayushman Bharat Yojana	❑ To uplift rural and tribal communities, ensuring better living standards and increased opportunities for all.
Article 48	❑ Krishi Vigyan Kendras ❑ Soil Health Card Scheme ❑ The Delhi Agricultural Cattle Preservation Act, 1994 ❑ The U.P. Prevention of Cow Slaughter Act, 1955	❑ To organise and uplift agriculture and husbandry.
Article 48A	❑ The Wildlife (Protection) Act, 1972 and Forest (Conservation) Act, 1980	❑ To safeguard the wildlife and the forests respectively.
Article 49	❑ The Ancient and Historical Monument and Archaeological Sites and Remains Act (1951)	❑ To protect the monuments, places and objects of national importance.
Article 50	❑ The Criminal Procedure Code (1973)	❑ Separated the judiciary from the executive in the public services of the state.
Article 51	❑ Policy of Non-Alignment and Panchsheel Siddhant	❑ To promote international peace and security.

Conflict between Fundamental Rights & Directive Principles of State Policies

The differences between the Fundamental Rights (FR) and the Directive Principles of State Policy (DPSP) in the Indian Constitution are as follows:

Feature	Fundamental Rights	Directive Principles of State Policy
Enforceability	Legally enforceable	Not legally enforceable
Nature	Justiciable	Non-justiciable
Purpose	Protect individual liberties	Promote social, economic, and political welfare

Scope	Limited to specific rights enumerated in the Constitution	Wider scope, encompassing social, economic, and political goals
Role of Judiciary	Can be enforced by the courts	Not enforceable by the courts
Impact on Legislation	Can be used to strike down laws that violate them	Serve as guidelines for making laws

Judicial Cases Related to DPSP

The conflict between the justiciability of Fundamental Rights and the non-justiciability of Directive Principles, along with the moral obligation of the State to implement Directive Principles as outlined in **Article 37**, has been a persistent issue since the inception of the Constitution.

The conflict can be understood through various cases like

Champakam Dorairajan Case (1951)

- In a pivotal ruling, the Supreme Court determined that in the event of a conflict between Fundamental Rights and Directive Principles, the former would take precedence. This decision reaffirmed the paramount importance of individual liberties while balancing the broader societal objectives outlined in the Directive Principles.
- Directive Principles must align with and operate in harmony with Fundamental Rights, serving as a supportive framework. This ruling reinforces the foundational significance of individual freedoms, emphasizing their precedence in the legal landscape.
- The **Supreme Court**'s ruling established that **Fundamental Rights could be amended by Parliament through constitutional amendment acts**. This decision highlighted the dynamic nature of the legal framework, allowing for necessary modifications while upholding the essence of individual liberties.

Golaknath Case (1967)

- The verdict of the **Champakam Dorairajan Case** underwent a significant change when the Supreme Court in the Golaknath Case unequivocally stated that **Fundamental Rights could not be amended by the Parliament, even with the intent of implementing Directive Principles.** This landmark decision reinforced the inviolability of individual liberties, ensuring their safeguarding against any legislative amendments.

25th Constitutional Amendment Act (1971)

The **25th Amendment Act** introduced a new **Article 31C**, containing two provisions:

- According to this provision, laws aimed at implementing the socialistic Directive Principles outlined in **Article 39(b) and (c)** will not be deemed void for contravening Fundamental Rights like equality before the law **(Article 14)**, protection of rights related to speech, assembly, and movement **(Article 19)**, or the right to property **(Article 31)**.

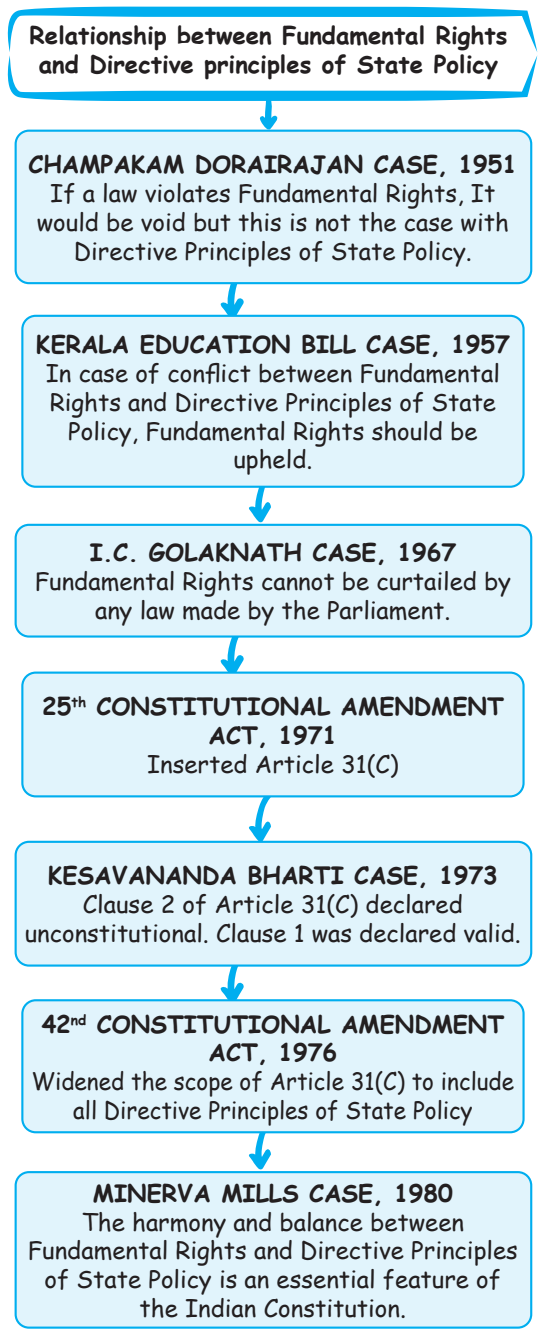

Relationship between Fundamental Rights and Directive principles of State Policy
CHAMPAKAM DORAIRAJAN CASE, 1951
If a law violates Fundamental Rights, It would be void but this is not the case with Directive Principles of State Policy.
KERALA EDUCATION BILL CASE, 1957
In case of conflict between Fundamental Rights and Directive Principles of State Policy, Fundamental Rights should be upheld.
I.C. GOLAKNATH CASE, 1967
Fundamental Rights cannot be curtailed by any law made by the Parliament.
25th CONSTITUTIONAL AMENDMENT ACT, 1971
Inserted Article 31(C)
KESAVANANDA BHARTI CASE, 1973
Clause 2 of Article 31(C) declared unconstitutional. Clause 1 was declared valid.
42nd CONSTITUTIONAL AMENDMENT ACT, 1976
Widened the scope of Article 31(C) to include all Directive Principles of State Policy
MINERVA MILLS CASE, 1980
The harmony and balance between Fundamental Rights and Directive Principles of State Policy is an essential feature of the Indian Constitution.

Fig. 11.6: Relationship between Fundamental Rights and Directive principles of State Policy

- This legal safeguard ensures that initiatives geared towards promoting social justice and economic equality are not hindered by legal challenges, fostering a conducive environment for progressive policies to thrive.

- Any law declaring the implementation of a specific policy will not be subject to questioning in any court if it fails to realise that policy fully. This legal principle serves to provide a stable environment for policy implementation, ensuring that legislative efforts are not hampered by legal challenges and allowing the government to focus on the effective execution of important policies for the benefit of society.

Kesavananda Bharati Case (1973)

- In this landmark case, the Supreme Court declared the **second provision of Article 31C**, added by the 25th Amendment Act, as **'Unconstitutional'.** However, it **upheld the first provision of Article 31C** as constitutional and valid. Hence, laws aimed at implementing the socialistic Directive Principles outlined in **Article 39(b) and (c)** will not be deemed void for contravening Fundamental Rights like equality before the law **(Article 14)**, protection of rights related to speech, assembly, and movement **(Article 19)**, or the right to property **(Article 31)**.

42nd Constitutional Amendment Act (1976)

- Through the **42nd Amendment Act of 1976**, Parliament significantly expanded the scope of the first provision of **Article 31C**. This amendment granted **legal primacy and supremacy** to all the Directive Principles over Fundamental Rights enshrined in **Articles 14, 19, and 31 and not just Article 39 (b) and (c).** The amendment marked a pivotal moment in the nation's legal framework, ensuring that socioeconomic justice and inclusive policies took precedence in shaping India's future.

Minerva Mills Case (1980)

- The Supreme Court deemed the extension of Article 31C, introduced by the 42nd Amendment Act, **unconstitutional and invalid.** The Court emphasised that the Indian Constitution thrives on a delicate **equilibrium between Fundamental Rights and Directive Principles.** The court held that the objectives outlined in the Directive Principles must be attained without compromising the avenues afforded by Fundamental Rights.

Current Status of Relationship between FR and DPSP

- The **current scenario** upholds the **precedence of Fundamental Rights over Directive Principles** in the Indian Constitution. However, this does not imply that Directive Principles cannot be put into practice.
- The Parliament has the authority to make amendments to Fundamental Rights under **Article 14** and **Article 19** in order to facilitate the implementation of Directive Principles under **Article 39(b), Article 39(c)**.

- The **Doctrine of Harmonious Construction** is a legal principle in India that ensures the harmonious coexistence of Fundamental Rights (FRs) and Directive Principles of State Policy (DPSPs) in the Indian Constitution.
- This doctrine is important because it prevents conflicts between FRs and DPSPs and ensures that the implementation of DPSPs does not encroach upon or limit the fundamental rights of individuals. It strikes a balance between individual liberties and societal goals, ensuring that the pursuit of societal welfare does not come at the expense of individual rights.

The Call for a Uniform Civil Code (UCC)

The demand for a UCC has been a persistent issue in India's political and legal landscape since before the country's independence. The Supreme Court has repeatedly emphasized the need for a UCC, citing its potential to promote gender equality, national unity, and secularism. The **21st Law Commission of India** also submitted a consultation paper on reforms in family laws, advocating for a UCC.

Historical Context of UCC in India -

- The **Portuguese Civil Code**, implemented in Goa during their rule, provided a common civil law framework for all citizens, irrespective of religion.
- The 1941 **BN Rau Committee** recommended a codified Hindu law that would grant equal rights to women.
- The Constituent Assembly debates revealed diverse opinions on the concept of a UCC, ranging from concerns about religious freedom to reservations regarding its implementation.
- **Article 44** of the Directive Principles of State Policy (DPSP) in the Indian Constitution directs the state to endeavor to secure a UCC for all citizens.

Objectives of a Uniform Civil Code -

- Establish a **single set of laws governing personal matters** such as marriage, divorce, inheritance, and adoption for all citizens, regardless of their religious affiliation.
- Ensure **equality and uniformity of laws** within and across religious communities, particularly in terms of gender rights.
- Promote **social reform and gender justice** by eliminating discriminatory provisions in personal laws.
- Foster **national integration and unity** by removing disparities based on religious beliefs.

Supreme Court Judgments on UCC -

- **Mohd. Ahmed Khan Vs Shah Bano Begum (1985):** The Supreme Court observed that a common civil code would help the cause of national integration by removing disparate loyalties to law that have conflicting ideologies.
- **Sarla Mudgal Case:** The Court stated that it is regrettable that **Article 44** of the Constitution has not been enforced and that a common civil code would promote harmony in society.
- **John Vallamattom case:** The Court reiterated that a common civil code would help the cause of national integration by removing contradictions based on ideologies.

Challenges and Issues Related to UCC -

- Existence of **legal pluralism in civil laws**, with variations in state-specific amendments.
- **Contradictory provisions** in the Constitution regarding personal laws and uniformity: **Articles 371 (A) to (I) and the sixth schedule** of the Constitution of India provide certain protections or rather exceptions to the states of Assam, Nagaland, Mizoram, Andhra Pradesh and Goa with respect to family law.
- **Difficulty in achieving consensus** due to India's religious diversity and varying interpretations of secularism. In 2018, the Law Commission of India opined that the Uniform Civil Code is "**neither necessary nor desirable at this stage**" in the country.
- **Issue of Drafting the UCC:** One of the biggest obstacles in implementing the UCC, apart from obtaining a consensus, is the drafting. There is **no guideline or a vision document**, whether UCC be a blend of all the personal laws or a new and common law adhering to the constitutional mandate.

The implementation of a Uniform Civil Code remains a **complex and contentious issue** in India. While proponents argue for its potential to **promote gender equality and national unity**, opponents raise concerns about religious freedom and minority rights. The Indian government faces a delicate balance in addressing these concerns while striving to achieve a more equitable and just society for all citizens.

CONCLUSION

The Directive Principles of State Policy (DPSPs) serve as guiding principles, steering the government towards achieving social justice, economic prosperity, and political empowerment for all citizens. While the DPSPs may not wield the legal teeth of enforceable laws, their influence extends far beyond the realm of jurisprudence. They embody the collective aspirations of a nation, a testament to the ideals that bind its people together.

Fundamental Duties

12

INTRODUCTION

Fundamental Duty encompasses obligations for every citizen, such as respecting national symbols, cherishing the nation's heritage, and upholding its sovereignty, thereby encouraging a committed and responsible citizenry in contributing to the nation's welfare and integrity.

Historical Background

The framers of the Constitution initially did not find it essential to include the Fundamental Duties of citizens within the Constitution. It wasn't until 1976 that the Fundamental Duties of citizens were eventually incorporated into the Constitution. These duties were added to **Part IV-A of the Constitution** through the **42nd Constitutional Amendment Act in 1976**, based on the recommendations of the Swaran Singh Committee. This was inspired from the Soviet Union Constitution.

Swaran Singh Committee

Following a comprehensive analysis of historical events and the repercussions of internal emergencies, the Swaran Singh Committee put forth a series of proposals outlining the ideal path forward for the citizens of India. The Swaran Singh Committee suggested **eight duties** to be incorporated in the constitution as duties of the citizens.

Recommendations:

- To respect and abide by the Constitution and the laws.
- To uphold the sovereignty of the nation and to function in such a way as to sustain and strengthen its unity and integrity.
- To respect the democratic institutions enshrined in the Constitution, and not to do anything which may impair their dignity or authority.
- To defend the country and to render national service including military service when called upon to do so.
- To abjure communalism in any form.
- To render assistance and cooperation to the State in the implementation of Directive Principles of State Policy and to promote the common good of the people so as to sub-serve the interests of social and economic justice.
- To abjure violence; to protect and safeguard public property and not to do anything which may cause damage or destruction to such property.
- To pay taxes according to the law.

However, the then Government led by Prime Minister Indira Gandhi did not accept all suggestions or recommendations made by the Swaran Singh Committee like duty to pay taxes.

In 2002, an additional duty was added **through the 86th Constitutional Amendment Act, 2002,** ensuring education for children of the age group 6-14 years. This evolution underscores our commitment to fostering a responsible, conscientious society where rights and duties coexist, shaping a progressive nation.

As per Article 51A of the Indian Constitution, it is the responsibility of every citizen of India to -

- **Duty of Respect:** To abide by the rules of the Constitution and respect its ideals, institutions, the National Flag, and the National Anthem.
- **Duty to cherish:** To cherish and follow the noble ideals which inspired our national struggle for freedom.
- **Duty to Uphold:** To uphold and protect the sovereignty, unity, and integrity of India.
- **Duty to defend:** To defend the country and render the national service when called upon to do so.
- **Duty of Promotion:** To Promote harmony and the spirit of common brotherhood amongst all the people of India, transcending religious, linguistic, and regional or sectional diversities, and renouncing practices derogatory to the dignity of women.
- **Duty to Preserve:** To value and preserve the rich heritage of our composite culture.
- **Duty of Protection:** To Protect and improve the natural environment, including forests, lakes, rivers, and wildlife, and to have compassion for living creatures.
- **Duty of nurturing Scientific temper and Humanism:** To develop the scientific temper, humanism, and the spirit for inquiry and reform.
- **Duty to safeguard public property:** To safeguard public property and to abjure violence.
- **Duty towards excellence:** To strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.
- **Duty to Provide opportunities:** To provide opportunities for education to children, or as the case may be, wards between the ages of six and fourteen years. (It was added by the **86th Constitutional Amendment Act, 2002)**

Features of Fundamental Duties

- **Moral and civic duties:**
  - Some Fundamental Duties are moral duties, while others are civic duties.
  - Moral duties, such as cherishing noble ideals of the freedom struggle, are not enforceable by law.
  - Civic duties, such as respecting the Constitution, National Flag, and National Anthem, are enforceable by law.
- **Rooted in Indian tradition:**
  - The Fundamental Duties are rooted in Indian tradition, mythology, religions, and practices reflecting the traditional Indian values of dharma, tyaga, samata, ekata, rashtra-bhakti, veerata, karmayoga, sarvadharma sambhava, vasudhaiva kutumbakam, samskriti raksha, anekata, prithvi puja, eko yogi ekobhogi, jijnasu, vidya, ahimsa, aparigraha, kaushalam, and uttam.
  - They essentially contain the tasks which are integral to the Indian way of life.
- **Limited to citizens:**
  - Unlike some Fundamental Rights, which extend to all persons, whether citizens or foreigners, the Fundamental Duties are confined to Indian citizens only.
- **Non-justiciable:**
  - Like the Directive Principles of State Policy, the Fundamental Duties are non-justiciable.
  - This means that the courts cannot enforce them directly.
  - However, the Parliament is free to enforce them by suitable legislation.

Significance of Fundamental Duties

Despite facing criticisms and opposition, the Fundamental Duties are regarded as significant for the following reasons:

IGNITE YOUR MIND

While the Fundamental Duties enshrined in the Indian Constitution emphasize the responsibilities of citizens towards the nation, concerns arise about their potential for promoting a paternalistic state and undermining individual liberties. How can we strike a balance between fostering civic responsibility and upholding individual autonomy?

- **Cultivating Moral and Ethical Values:** They encourage the inculcation of moral and ethical values, contributing to the overall character development of citizens and the betterment of society as a whole.
- **Balancing Rights and Responsibilities:** They strike a balance between individual rights and responsibilities, emphasizing that citizens' rights should be exercised while respecting societal norms and obligations.
- **Preserving National Integrity:** Fundamental Duties contribute to national unity and integrity by instilling a sense of patriotism and a commitment to the country's well-being.
- **Fostering Social Harmony:** They promote social harmony and respect for diverse cultures, religions, and languages, reducing conflicts and tensions within society.
- **Protecting Constitutional Values:** Fundamental Duties reinforce the values and principles enshrined in the Constitution, ensuring the preservation of India's democratic and secular character.
- **Strengthening the Rule of Law:** They reinforce respect for the rule of law and help in the maintenance of law and order, contributing to a just and orderly society.
- **Encouraging Environmental Consciousness:** Fundamental Duties highlight the importance of environmental protection, promoting sustainable development and ecological responsibility.

The Fundamental Duties in the Indian Constitution have faced various criticisms that are as follows

- **Non-justiciable nature:** A significant criticism of Fundamental Duties is their non-justiciable character. Unlike Fundamental Rights, which are enforceable by courts, Fundamental Duties cannot be enforced through legal means. This renders them more akin to moral obligations rather than legal mandates.
- **Vagueness and ambiguity:** Some Fundamental Duties are criticized for being vague and ambiguous, leaving room for interpretation and potential misuse. For instance, the duty to "protect and safeguard public property" can be interpreted in various ways and may not provide clear guidelines for individual actions.
- **Redundancy and overlap with existing laws:** Critics argue that some Fundamental Duties overlap with existing laws and regulations, making them redundant and potentially confusing. For example, the duty to "abide by the Code of Civil Procedure in the event of any dispute" reiterates the existing legal framework for resolving disputes.
- **Limited scope and exclusion of important responsibilities:** The list of Fundamental Duties is criticized for being limited in scope and not encompassing essential responsibilities like voting, paying taxes, and family planning. These duties are crucial for the functioning of a democratic society and should be included to promote responsible citizenship.
- **Diminished importance due to inclusion in Part IV-A:** The placement of Fundamental Duties in Part IV-A of the Constitution, separate from Fundamental Rights, has been criticized for diminishing their importance. This segregation suggests that Fundamental Duties are secondary to Fundamental Rights, which are enshrined in Part III.

- **Lack of clarity during a crisis or emergency:** The applicability of Fundamental Duties during a crisis or emergency is unclear. The Constitution does not explicitly address whether Fundamental Duties can be suspended or restricted during such situations, raising concerns about their effectiveness in exceptional circumstances.

Rights and Duties

- **Mahatma Gandhi in the book "Hind Swaraj"** observed that **"Real rights are a result of the performance of duty".** Rights and duties are closely related and cannot be separated from one another. **For every right, there is a corresponding duty. For instance,** the State protects and enforces rights, and it is the duty of all citizens to be loyal to the state. Thus, a **citizen has both Rights and Duties.**
- According to **Harold Laski, "One man's right is also his duty."**
  - For example, if the State gives the right to life to a citizen, it also imposes an obligation on him to not to expose his life to dangers, as well as to respect the life of others.
- According to **Article 29 of the** Universal Declaration of Human Rights **(UDHR), "Everyone has duties to the community in which alone the free and full development of his personality is possible."**
- According to **Venkaiya Naidu, "Fundamental Rights are critically dependent on the discharge of Fundamental Duties since both flow from each other".**
- Difference between Fundamental Rights and Fundamental Duties

Aspects	Fundamental Rights	Fundamental Duties
Nature	Rights conferred upon citizens by the Constitution to protect their individual liberties and interests.	Moral and civic obligations that citizens are expected to fulfill for the betterment of society.
Constitutional Basis	Enshrined in Part III (Articles 12-35) of the Indian Constitution.	Inserted in Part IV-A (Article 51A) through the 42nd Amendment Act, 1976.
Enforcement	Citizens can directly approach the judiciary (courts) to seek remedies in case of violation.	There are no direct legal remedies for violation; they are non-justiciable, meaning they cannot be enforced by the courts.
Individual vs. Society	Primarily focused on protecting individual interests and freedoms, such as the right to life, liberty, equality, and expression.	Emphasize civic responsibilities towards the nation and society, like upholding the integrity of the country and promoting scientific temper.
Nature of Rights	Negative, rights limit the interference of the state in the lives of citizens.	Positive, duties require citizens to actively contribute to the welfare of society.
Legal Enforcement	Violation of Fundamental Rights can lead to legal action against the government or individuals responsible.	Violation of Fundamental Duties does not lead to legal action; they are more of a moral and ethical guide.
Historical Context	Inspired by the Bill of Rights in the U.S. Constitution.	Inspired by the Soviet Constitution and socio-cultural values.
Examples	Right to Equality, Right to Freedom of Speech, Right to Education, etc.	Respect for the National Flag and National Anthem, Promoting scientific temper, Safeguarding public property, etc.

Important Cases related to Fundamental Duties

- **Minerva Mills Ltd. vs. Union of India (1980)**
  - This case involved a challenge to the constitutionality of the 42nd Amendment Act, which had inserted Part IV-A into the Constitution, containing the Fundamental Duties.
  - **Supreme Court Verdict:** The Court upheld the validity of the amendment but held that the Fundamental Duties were not enforceable through the courts.
- **M.C. Mehta vs. Union of India (2000)**
  - In this case, the Court dealt with the issue of whether the Fundamental Duty to protect and improve the natural environment included the duty to prevent pollution.
  - **Supreme Court Verdict:** The Supreme Court made it compulsory for all educational institutes to organise a one-hour lecture on protecting and preserving the natural environment and made the **Central Government** duty-bound to make this rule in all such institutes and make it part of their curriculum and issued certain directions in general to the Central Government and citizens on maintaining a healthy ecology and preserving the natural environment.
- **In Ramlila Maidan Incident vs. Home Secretary (2012)**
  - This case dealt with the right to freedom of speech and expression.
  - **Supreme Court Verdict:** The right to freedom of speech and expression is a fundamental right, but that

it is subject to reasonable restrictions in the interests of public order, morality, and national security.

- The Court also noted that the Fundamental Duty to respect the Constitution and the laws made there is essential to protect freedom of speech and expression.

Recommendations of Various other Committees

Justice Verma Committee

On the need to obey Fundamental Duties, the **Supreme Court of India** issued a notice in 1998 to the Government of India enquiring about its plan to teach Fundamental Duties to the citizens of the country.

In response to this notice, the Government of India established a committee under the chairmanship of Justice J.S. Verma Committee, known as the **Verma Committee on Fundamental Duties of the Citizens (1999)** to examine operational aspects of Fundamental Duties and recommend steps that can teach and educate people about the need to obey Fundamental Duties.

Some of its recommendations are as follows:

Verma Committee had identified a **few existing acts** by which a proper implementation of such duties can be accomplished:

- **Prevention of Insults to National Honour Act, 1971:** Under this act, disrespecting the National flag, the Constitution of India, and the National Anthem is illegal, upholding respect for these symbols.
- **Wildlife (Protection) Act, 1972:** By protecting and regulating trade involving rare and endangered animals, this act drives conservation efforts and preserves biodiversity.
- **Forest (Conservation) Act, 1980:** This act ensures the conservation of forests and sustainable environmental practices.

- Fundamental duties will raise the standards of citizens in public life. Therefore, every individual should obey and promote these duties.
- **Public officeholders** should **avoid selfishness or nepotism**. Their foremost priority must be to serve public interests rather than individual interests.
- **Integrity** should be the main principle in the functioning of public office.
- Holders of public office must be **accountable** for their decisions and actions, upholding their Fundamental Duties to the public.
- They should be as open as possible about all the decisions and actions that they made.
- **Leadership** is very important in the sense that holders of public office should promote these principles through leadership skills and set an example.

National Commission to Review the Working of the Constitution (NCRWC)

IGNITE YOUR MIND

The fundamental duties are an attempt to act as a reminder to each and every citizen of our country to observe positive basic norms and rules to carry out democratic behavior. Why do you think that such an essential aspect of our Constitution is not legally enforceable? Can you think of any other Constitutions across the world which legally bind its citizens to perform their duties?

The Constitution Review Commission, **chaired by M.N. Venkatachaliah** also recommended some initiatives to be taken by the government for the successful implementation of Fundamental Duties.

- **Few of its key recommendations are:**
  - The Union and State governments should sensitize the people and **create general awareness** about Fundamental Duties amongst the citizens.
  - People should be sensitized about their **duty to vote in elections, pay taxes,** and actively participate in the democratic process of governance.
  - Recommendations of the **Justice Verma Committee** on the operationalization of the Fundamental duties of citizens should be implemented as soon as possible.
  - Industrial Organisations should provide education to the children of their employees.

Laws enforcing Fundamental Duties:

Policy	Details	Fundamental Duties Implemented by it
Prevention of Insults to National Honour Act, 1971	This law prohibits insults to the national flag, the Constitution, and the national anthem.	Article 51A (a)

The Dowry Prohibition Act, 1961	This law prohibits the giving or taking of dowry, which is a traditional practice of giving gifts or money to the groom's family at the time of marriage.	Article 51A (e)
The Wildlife Protection Act, 1972	This law protects wildlife and their habitats.	Article 51A (g)
The Forest Conservation Act, 1980	This law regulates the conservation and management of forests.	Article 51A (g)
The Child Labour (Prohibition and Regulation) Act, 1986	This law prohibits the employment of children below the age of 14 in certain occupations and regulates the working conditions of children between the ages of 14 and 18.	Article 51A (k)

CONCLUSION

The Fundamental Duties are not mere formalities but are essential for the holistic development of individuals and the nation. They remind us that the rights we enjoy are complemented by duties we owe to our country, society, and ourselves. In a rapidly evolving global landscape, these duties acquire even greater significance. They guide us to contribute positively to the nation's progress while upholding its democratic ethos and preserving its rich cultural heritage.

Centre-State Relations

13

INTRODUCTION

The Indian Constitution, being federal in structure, divides all powers (legislative, executive, and financial) between the Central and the State governments. At the same time, the Constitution established an integrated judicial system to enforce both Central laws as well as State laws.

Although the Parliament and State legislature derive their own powers from the Constitution, maximum harmony and coordination between them is essential for the effective functioning of the federal system. Therefore, the Constitution contains elaborate provisions to regulate the various aspects of Centre-State relations.

Centre-State relations can be studied under three main headings:

- **Legislative relations (Article 245-Article 255)**
  - This includes the division of legislative powers between the Parliament and the State legislature, as well as the procedures for passing joint legislation.
- **Administrative relations (Article 256-Article 263)**
  - This includes the coordination between the Parliament and the State legislature in the implementation of laws and policies.
- **Financial relations (Article 268-Article 293)**
  - This includes the distribution of financial resources between the Centre and the States, as well as the mechanisms for intergovernmental transfers.

Legislative Relations

Part XI of the Indian Constitution deals with legislative relations between the Centre and States, comprising **Articles 245 to 255**. In addition, there are a few other articles dealing with the same subject.

The Indian Constitution divides the legislative powers between the Centre and the States, both in terms of territory and subjects of legislation. Additionally, the Constitution provides for parliamentary legislation in the State sphere under five extraordinary circumstances, as well as parliamentary control over State legislation in certain cases.

Centre-State legislative relations can be divided into four aspects:

- Territorial extent of Central and State legislation (Article 245)
- Distribution of legislative subjects (Article 246)
- Parliamentary legislation in the State field (Articles 249 and 250)
- Central government control over State legislation (Articles 251, 252, 253, 254, and 256)

Territorial Extent of Central and State Legislation

Article 245: Extent of laws made by Parliament and by the Legislatures of States

The Indian Constitution defines the territorial limits of legislative powers vested in the Parliament and the State legislature as follows:

- **Centre's legislative powers**
  - The Parliament can make laws for the whole or any part of the territory of India, which includes the States, the Union Territories, and any other area that is currently a part of India.
- **States' legislative powers**
  - A State legislature can make laws for the whole or any part of the State. However, State laws are not applicable outside the State unless there is a close connection between the State and the purpose of the law.
- **Extraterritorial legislation**
  - Only the Parliament can make extra-territorial laws, which apply to Indian citizens and their property anywhere in the world.
  - However, the Indian Constitution restricts the **Centre's plenary territorial jurisdiction.** In other words, the laws of the Parliament do not apply in the following areas:
- **President's Regulations in Union Territories (Article 240)**
  - The President can make regulations for the peace, progress, and good government of the five union territories, i.e., Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli, Daman and Diu, and Ladakh.
  - A regulation made by the President has the same force and effect as an act of Parliament.
  - It can also repeal or amend any act of Parliament in relation to these union territories.
- **Governor's Authority in Scheduled and Tribal Areas (Fifth and Sixth Schedule)**
  - The Governor is empowered to direct that an act of Parliament does not apply to a scheduled area in the State, or apply with specified modifications and exceptions.

- The Governor of Assam may likewise direct that an act of Parliament does not apply to a tribal area (autonomous district) in the State, or apply with specified modifications and exceptions.

❑ **President's Power in Tribal Areas of Other States (Sixth Schedule)**
- The President has the same power with respect to tribal areas (autonomous districts) in Meghalaya, Tripura, and Mizoram.

Distribution of Legislative Subjects

Article 246: Subject matter of laws made by Parliament and by the Legislatures of States

The Seventh Schedule of the Indian Constitution provides for a **three-fold** distribution of legislative subjects between the Centre and States:

❑ **Union List**
- The Parliament has exclusive power to make laws on the subjects enumerated in the Union List. This list currently has **100 subjects (originally 97)**, including defence, banking, foreign affairs, currency, atomic energy, insurance, communication, interstate trade and commerce, census, and audit.

❑ **State List**
- The State governments have exclusive power to make laws on the subjects enumerated in the State List. This list currently has **61 subjects (originally 66)**, including public order, police, public health and sanitation, agriculture, prisons, local government, fisheries, markets, theatres, and gambling.

❑ **Concurrent List**
- Both the Centre and the States can make laws on the subjects enumerated in the Concurrent List. This list currently has **52 subjects (originally 47)**, including criminal law and procedure, civil procedure, marriage and divorce, population control and family planning, electricity, labour welfare, economic and social planning, drugs, newspapers, books, and printing press.

The **42nd Amendment** of the Indian Constitution, enacted in **1976**, brought about a significant change in the division of legislative powers between the Centre and the States. It **transferred five subjects from the State List to the Concurrent List**, which means that both the Central and State governments can now legislate on these matters. These subjects are:
- Education
- Forests
- Weights and Measures
- Protection of Wild Animals and Birds
- Administration of Justice, including the constitution and organisation of all courts except the Supreme Court and the high courts.

In addition to the above, the following provisions apply:

❑ The Centre has power to make laws with respect to any matter for any part of the territory of India that is not included in a State, even if that matter is enumerated in the State List. This provision applies to the Union Territories and any acquired territories.

❑ The **101st Amendment Act of 2016** made a special provision for Goods and Services tax (GST). Accordingly, both the Parliament and the State Legislatures have power to make laws with respect to GST imposed by the Union or by the State. However, the Parliament has exclusive power to make laws with respect to GST where the supply of goods or services, or both, takes place in the course of interstate trade or commerce.

Article 248: Residuary powers of legislation

(1) Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List.

(2) Such power shall include the power of making any law imposing a tax not mentioned in either of those lists.

Article 254: Inconsistency between laws made by Parliament and laws made by the State Legislatures

❑ The Constitution establishes the supremacy of the Union List over both the State List and the Concurrent List, and the supremacy of the Concurrent List over the State List. This means that in the event of overlapping legislative subjects between the Union List and the State List, the Union List prevails. Similarly, in the case of overlapping subjects between the Union List and the Concurrent List, the Union List takes precedence. Finally, if there is a conflict between the Concurrent List and the State List, the Concurrent List prevails.

❑ In the event of a conflict between a Central law and a State law on a subject enumerated in the Concurrent List, the Central law takes precedence over the State law. However, there is an exception.

❑ If the State law has been reserved for the consideration of the President and has received his/her assent, then the State law prevails in that State. However, the Parliament still has the authority to override such a law by subsequently making a law on the same matter.

Comparative Analysis:

❑ The Union List of the Indian Constitution includes matters of national importance and matters that require uniform legislation across the country. The State List includes matters of regional and local importance, as well as matters that allow for diversity of interest. The Concurrent List includes matters on which uniform legislation throughout the country is desirable but not essential, thus allowing for diversity along with uniformity.

- In the United States, only the powers of the federal government are explicitly listed in the Constitution, while all other powers are reserved for the States. This approach is known as single enumeration. The Australian Constitution follows the American model of single enumeration. In contrast, the Canadian Constitution employs a double enumeration system, with both federal and provincial powers explicitly listed. The residual powers, those not explicitly granted to either the federal government or the provinces, are vested in the federal government.
- The **Government of India Act of 1935** introduced a **three-tiered distribution of Union powers:** federal, provincial, and concurrent. The current Constitution upholds this structure, with one distinction: under the previous Act, residual powers were vested in neither federal nor provincial legislatures but in the Governor-General of India. In this respect, India follows the Canadian precedent.

Parliamentary legislation in the State field

The distribution of legislative powers between the Central government and the State governments outlined above is intended to be maintained during normal times. However, under exceptional circumstances, this distribution may be modified or even suspended. In other words, the Constitution grants the Parliament the authority to legislate on any matter listed in the State List in the following five extraordinary situations:

- **When Rajya Sabha Passes a Resolution (Article 249)**
  - If the Rajya Sabha declares that it is necessary for the national interest for the Parliament to make laws with respect to the Goods and Services tax (GST) or a matter in the State List, then the Parliament becomes authorised to make laws on that matter. Such a resolution must be supported by two-third of the members present and voting. The resolution remains in force for one year, it can be renewed any number of times but not exceeding one year at a time. The laws made under this provision cease to have effect six months after the resolution has ceased to be in force.
  - This provision does not restrict the power of a State legislature to make laws on the same matter. However, in case of inconsistency between a State law and a Parliamentary law, the latter is to prevail.
- **During national emergency (Article 250)**
  - During the proclamation of a national emergency, the Parliament acquires the power to legislate with respect to Goods and Services tax (GST) or matters in the State List. These laws become inoperative six months after the emergency has ceased to operate.
  - The power of a State Legislature to make laws on the same matter remains unrestricted. However, in case of repugnancy between a State law and a Parliamentary law, the latter prevails.
- **When States Make a Request (Article 252)**
  - If the legislatures of two or more States pass resolutions requesting the Parliament to enact laws on a matter in the State List, the Parliament can then make laws to regulate that matter. A law enacted in this manner applies only to the States that have passed the resolutions. However, any other State can adopt the law at a later time by passing a similar resolution to that effect in its legislature. Such a law can only be amended or repealed by the Parliament and not by the legislatures of the concerned States.
  - The effect of passing a resolution under this provision is that the Parliament gains the authority to legislate on a matter for which it would not normally have the power to make a law. Conversely, the State legislature loses the power to make a law with respect to that matter. The resolution acts as an abdication or surrender of the State legislature's power over that matter, placing it entirely in the hands of the Parliament, which then becomes the sole authority to legislate on that matter.
  - **Examples** of laws passed under this provision include the **Prize Competition Act of 1955, the Wild Life (Protection) Act of 1972, the Water (Prevention and Control of Pollution) Act of 1974, the Urban Land (Ceiling and Regulation) Act of 1976, and the Transplantation of Human Organs Act of 1994**.
- **To Implement International Agreements (Article 253)**
  - The Parliament has the authority to make laws on any matter in the State List to implement international treaties, agreements, or conventions. This provision empowers the Central Government to fulfil its international obligations and commitments.
  - **Examples** of laws enacted under this provision include the **United Nations (Privileges and Immunities) Act of 1947, the Geneva Convention Act of 1960, the Anti-Hijacking Act of 1982, and legislations related to the environment and TRIPS**.
- **During President's Rule (Article 356)**
  - When the President's Rule is imposed in a State, the Parliament gains the authority to make laws regarding any matter in the State List pertaining to that State. Such laws enacted by the Parliament remain in effect even after the President's Rule is lifted. This implies that the validity of these laws is not tied to the duration of the President's Rule. However, the State legislature retains the power to repeal, amend, or re-enact these laws.

Centre's control over State legislation

In addition to the Parliament's power to directly legislate on State subjects under exceptional circumstances, the Constitution grants the Centre the authority to exert control over the States' legislative matters in the following ways:

- **Governor's Reservation of Bills**
  - The Governor has the authority to withhold certain types of bills passed by the State legislature for the President's consideration. The President possesses absolute veto power over these bills, meaning they cannot become law without the President's approval.
- **President's Sanction for Certain Bills**
  - Bills pertaining to specific topics listed in the State List can only be introduced in the State legislature with the prior approval of the President. For instance, bills that impose restrictions on the freedom of trade and commerce require the President's sanction before being introduced.
- **Reservation of Financial Bills During Emergencies**
  - During a financial emergency, the Centre can instruct the States to hold back money bills and other financial bills passed by the State legislature for the President's consideration. This allows the Centre to safeguard the nation's financial stability during times of crisis.

These mechanisms enable the Central Government to maintain a degree of oversight over the States' legislative activities, ensuring that State laws align with national interests and do not conflict with the overall framework of the Constitution.

The Constitution establishes Central dominance in the legislative sphere, allowing the Central Government to oversee and override State legislation, ensuring harmony and avoiding conflicts. This federal supremacy is vital for coherence and effective governance, preventing chaos from conflicting laws and preserving unity in diversity.

JUDICIAL DOCTRINES ON CENTRE-STATE RELATIONS

The **Doctrine of Pith and Substance, the Doctrine of Colourable Legislation, and the Doctrine of Territorial Nexus are crucial doctrines in maintaining harmonious Centre-State relations** in India's federal system. These doctrines play a vital role in ensuring that legislative powers are exercised appropriately, territorial boundaries are respected, and the delicate balance between Central and State authority is preserved.

Doctrine of Pith and Substance

The doctrine of pith and substance helps prevent legal conflicts by providing a framework for determining legislative competence, reducing the likelihood of disputes, and contributing to a stable legal environment. In constitutional law, it delineates legislative boundaries in a federal system, focusing on the true nature of a law to determine its validity.

Core Principles of the Doctrine

The doctrine of pith and substance rests on several core principles:

- **Legislative Competence**
  - It is a tool to ascertain if a law falls within the designated powers of the Centre or States, preventing encroachment.
- **True Nature of Legislation**
  - The assessment of a law's validity centres on its core purpose, not incidental effects.
- **Intra Vires Legislation**
  - It allows a law impacting another level's jurisdiction to be valid if its primary purpose aligns with the enacting level's competence, recognizing overlapping effects based on primary intent.

Applications of the Doctrine

The doctrine of pith and substance finds application in various scenarios within a federal system:

- **Distinguishing Between Central and Regional Laws**
  - The doctrine distinguishes between Central and regional government laws, clarifying legislative authority on specific matters.
- **Resolving Jurisdictional Disputes**
  - It helps resolve disputes, over legislative authority by providing a systematic approach to determine the competence of each government level.
- **Protecting the Rights of States**
  - The doctrine safeguards regional governments' rights and powers in a federal system, preventing the Centre from encroaching on States' legislative authority. Upholding the doctrine ensures courts protect regional autonomy and respect their legislative powers.

Significance of the Doctrine

It plays a crucial role in maintaining the balance of power between the Central and regional governments in a federal system:

- **Maintaining Constitutional Balance**
  - The doctrine ensures that each government adheres to its designated powers, preventing overstepping constitutional boundaries and maintaining the balance of power in the federal structure.
- **Ensuring Legislative Coherence**
  - The doctrine promotes coherence and consistency in lawmaking by delineating legislative spheres,

preventing overlapping or conflicting claims of authority, and ensuring a streamlined and effective legislative process.

- **Preventing Legal Conflicts**
  - The doctrine helps prevent legal conflicts by providing a framework for determining legislative competence, reducing the likelihood of disputes and contributing to a stable legal environment.

Examples of the Application of the Doctrine of Pith and Substance

- **State of West Bengal vs. Union of India (1967)**
  - The Supreme Court of India held that the Central government's law on the regulation of inter-State trade was intra vires under the doctrine of pith and substance.
- **Fertilizer Corporation Ltd. vs. Union of India (1981)**
  - The Supreme Court of India held that the Central government's law on the acquisition of land for public purposes was intra vires under the doctrine of pith and substance.
- **Minerva Mills Ltd. vs. Union of India (1980)**
  - The Supreme Court of India held that the Central government's law on the nationalisation of the textile industry was ultra vires under the doctrine of pith and substance.

Doctrine of Colourable Legislation

The doctrine of colourable legislation is a legal principle that prevents a legislature from indirectly enacting laws that it is not permitted to enact directly. This doctrine is particularly relevant in federal systems, where there is a division of power between the Central and the States.

Key Aspects of the Doctrine of Colourable Legislation

- **Prevention of Indirect Encroachment**
  - The doctrine of colourable legislation aims to prevent a legislature from indirectly encroaching upon the legislative domain of another level of government.
- **Focus on True Purpose of Legislation**
  - The doctrine emphasises that the true purpose of a law, rather than its superficial appearance, should be considered while determining its validity.
- **Ultra Vires Legislation**
  - If a law is found to be enacted solely for the purpose of indirectly enacting legislation that falls outside the legislative competence of the enacting level of government, it may be declared ultra vires under the doctrine of colourable legislation.

Applications of the Doctrine of Colourable Legislation

- **Protecting State Rights**
  - The doctrine of colourable legislation serves as a safeguard for the rights and powers of State governments within a federal system. It helps to prevent the Central government from indirectly encroaching upon the legislative authority of the States.
- **Judicial Review of Legislation**
  - Courts can apply the doctrine of colourable legislation to review the validity of laws enacted by legislatures. This helps to ensure that legislatures adhere to the constitutional boundaries of their legislative competence.
- **Preventing Misuse of Legislative Power**
  - The doctrine of colourable legislation acts as a deterrent against legislatures attempting to circumvent constitutional limitations on their legislative powers.

Examples of the Application of the Doctrine of Colourable Legislation

- **K.C. Gajapati Narayan Deo vs. State of Orissa (1953)**
  - The Supreme Court of India held that the State government's law regulating land acquisition was ultra vires under the doctrine of colourable legislation.
- **State of Bombay vs. Bombay Education Society (1954)**
  - The Supreme Court of India held that the State government's law regulating educational institutions was ultra vires under the doctrine of colourable legislation.
- **State of Rajasthan vs. Union of India (1977)**
  - The Supreme Court of India held that the Central government's law regulating gambling was ultra vires under the doctrine of colourable legislation.

Doctrine of Territorial Nexus

The Doctrine of Territorial Nexus asserts that laws are applicable only within the territorial boundaries of the enacting legislature. Derived from **Article 245** of the Indian Constitution, it grants exclusive power to State legislatures to make laws on State List matters, limiting their application to the respective State's territory.

The Doctrine of Territorial Nexus ensures that States have the autonomy to make laws on matters that are of concern to their own citizens, and it prevents the Central government from encroaching on the legislative powers of the States.

The Doctrine of Territorial Nexus has been affirmed by the Supreme Court of India in a number of cases:

- **State of Bihar vs. Kameshwar Singh,** the Supreme Court held that a State law that imposed a tax on goods transported from one State to another was invalid because there was no sufficient connection between the law and the object to which it applied.

Current Challenges in the Legislative Field

- **Wealth Tax Issue**
  - The Supreme Court ruled in the case of **Union of India vs H S Dhillon** that the Central government has

the authority to enact laws on matters that do not explicitly fall within the State List or the Concurrent List, unless they are specifically excluded from the Central government's jurisdiction.

- This principle of residuary power ensures flexibility in legislative power distribution and allows the Central government to address emerging issues that may not fit neatly into the existing legislative framework.

❑ **COVID-19 Pandemic Prompts Central Government to Invoke Residuary Power**

- Faced with the unprecedented COVID-19 pandemic, the Central government invoked its residuary power under Article 248, read with Entry 97 of List I, to enact the Disaster Management Act.
- This decision deviated from the traditional approach of using the Epidemic Diseases Act, which empowers State governments to address disease outbreaks.
- The Central government's choice reflected the unique nature of the COVID-19 pandemic and the need for a unified, coordinated response. The Disaster Management Act provided broader powers to implement measures like lockdowns, travel restrictions, and resource mobilisation.
- The use of residuary power underscores the Central government's ability to address exceptional circumstances that may not readily fit into the existing legislative framework.

❑ **Farm Bills**

- The word "agriculture" appears in multiple entries of all three Lists in the Seventh Schedule of the Constitution of India. However, in List I, where the Centre has primary legislative power, the word "agriculture" is accompanied by qualifiers like "other than" or "exclusive of" indicating that the Central government's power over agriculture is limited.
- This implies that the Central government cannot enact laws directly related to agriculture. Instead, the Central government's authority over agriculture is confined to the specific aspects listed in Entry 41 of List III (Concurrent List), which pertain solely to agricultural land designated as evacuee property.
- This restriction excludes the three farm laws in question, as they address broader aspects of agriculture beyond evacuee property.
- In essence, the Centre's legislative power over agriculture is significantly restricted, with the vast majority of agricultural matters falling under the purview of the States.

Challenges in Legislative Federalism

❑ **Gridlock and Inaction**

- The division of legislative power between multiple levels of government can lead to gridlock and inaction, especially when there is disagreement or political polarisation. This can result in delayed policy implementation and a lack of responsiveness to pressing issues.

❑ **Inconsistent Legislation**

- The absence of unified legislative action can lead to inconsistencies in laws and regulations across different jurisdictions. This can create confusion for businesses and citizens, hinder inter-state commerce, and complicate law enforcement.

❑ **Difficulties in Achieving Consensus**

- Reaching consensus among diverse legislative bodies with varying interests and priorities can be challenging. This can impede the passage of critical legislation and hinder progress on urgent issues.

❑ **Balancing National and Local Priorities**

- Legislators must balance national priorities and concerns with the specific needs and interests of their constituents. This balancing act can be complex and often leads to compromises or delays in addressing local issues.

❑ **Representation and Minority Rights**

- Ensuring fair representation and protection of minority rights can be challenging in a federal legislative system. The division of power can create disparities in the influence of different groups, potentially marginalising minority voices.

Positive Changes in Legislative Federalism

❑ **Enhanced Cooperation and Collaboration**

- There has been a growing recognition of the need for increased cooperation and collaboration among different levels of government. This has led to the development of new mechanisms for coordination, such as intergovernmental conferences, joint legislative committees, and model legislation.

❑ **Streamlined Legislative Processes**

- Efforts to streamline legislative processes have helped reduce delays and improve efficiency. This includes reducing procedural hurdles, establishing clear timetables for legislative review, and utilising technology to enhance communication and collaboration.

❑ **Data-Driven Policymaking**

- The increasing use of data and evidence-based approaches in policy making has improved the quality and effectiveness of legislation. This involves gathering, analysing, and using data to inform policy decisions and evaluate their outcomes.

❑ **Public Participation and Consultation**

- Greater efforts to engage the public in the legislative process have enhanced transparency and accountability. This includes public hearings, online consultations, and citizen feedback mechanisms.

- **Comparative Learning and Sharing Best Practices**
  - Subnational governments are increasingly learning from each other's experiences and sharing best practices. This helps improve the quality and effectiveness of legislation across jurisdictions.

IGNITE YOUR MIND

- Cooperative federalism means a combination of cooperation and interdependence between the Centre and the States to ensure smooth governance of the country. Let's suppose India's map was a map of dreams. What dreams might each state have? How do you think the central government can support those dreams to make our entire country a dreamland?

Articles Related to Centre-State Legislative Relations

Article Number	Subject Matter
245	Extent of laws made by Parliament and by the Legislatures of States
246	Subject Matter of Laws Made by Parliament and by the Legislatures of States
246A	Special provision with respect to Goods and Services tax
247	Power of Parliament to provide for the establishment of certain additional courts
248	Residuary Powers of Legislation
249	Power of Parliament to legislate with respect to a matter in the State List in the national interest
250	Power of Parliament to legislate with respect to any matter in the State List if a Proclamation of Emergency is in operation
251	Inconsistency between laws made by Parliament under Articles 249 and 250 and laws made by the Legislatures of States
252	Power of Parliament to legislate for two or more States by consent and adoption of such legislation by any other State
253	Legislation for giving effect to international agreements
254	Inconsistency between laws made by Parliament & laws made by legislatures of States
255	Requirements as to recommendations and previous sanctions to be regarded as matters of procedure only

Administrative Relations

The Indian Constitution's Part XI, encompassing **Articles 256 to 263,** outlines the administrative framework governing the relationship between the Centre and the States. Additionally, numerous other articles scattered throughout the Constitution address various aspects of this relationship.

Distribution of Executive Powers

The allocation of executive power between the Central government and the States of India generally mirrors the distribution of legislative power, with some exceptions.

Central Government's Executive Authority

The Central government's executive power encompasses two primary areas:

- **Union List Subjects**
  - The Central government holds executive authority over matters enumerated in the Union List, which includes subjects such as defence, foreign affairs, currency, and inter-state trade.
- **Treaty and Agreement-Based Rights**
  - The Central government exercises executive power in areas where it has been granted rights, authority, or jurisdiction through treaties or agreements.

State Government's Executive Authority

- Within their respective territories, State governments hold executive power over matters listed in the State List, which includes subjects such as education, public health, agriculture, and local government.

Executive Power in Concurrent Subjects

- For matters on which both the Parliament and the State legislatures have power of legislation (i.e., the subjects enumerated in the Concurrent List), the executive power primarily rests with the States. However, a constitutional provision or a Parliamentary law may specifically confer executive power on the Central government in certain instances.

In summary, the division of executive power between the Central government and the States reflects the federal structure of India, with each level of government having its own sphere of authority. This distribution of power ensures that both the Central and State governments can effectively manage and administer their respective areas of responsibility.

Obligation of States and the Centre

The Indian Constitution imposes two restrictions on the executive power of the States to ensure that the Central government has ample room for the unrestricted exercise of its executive power.

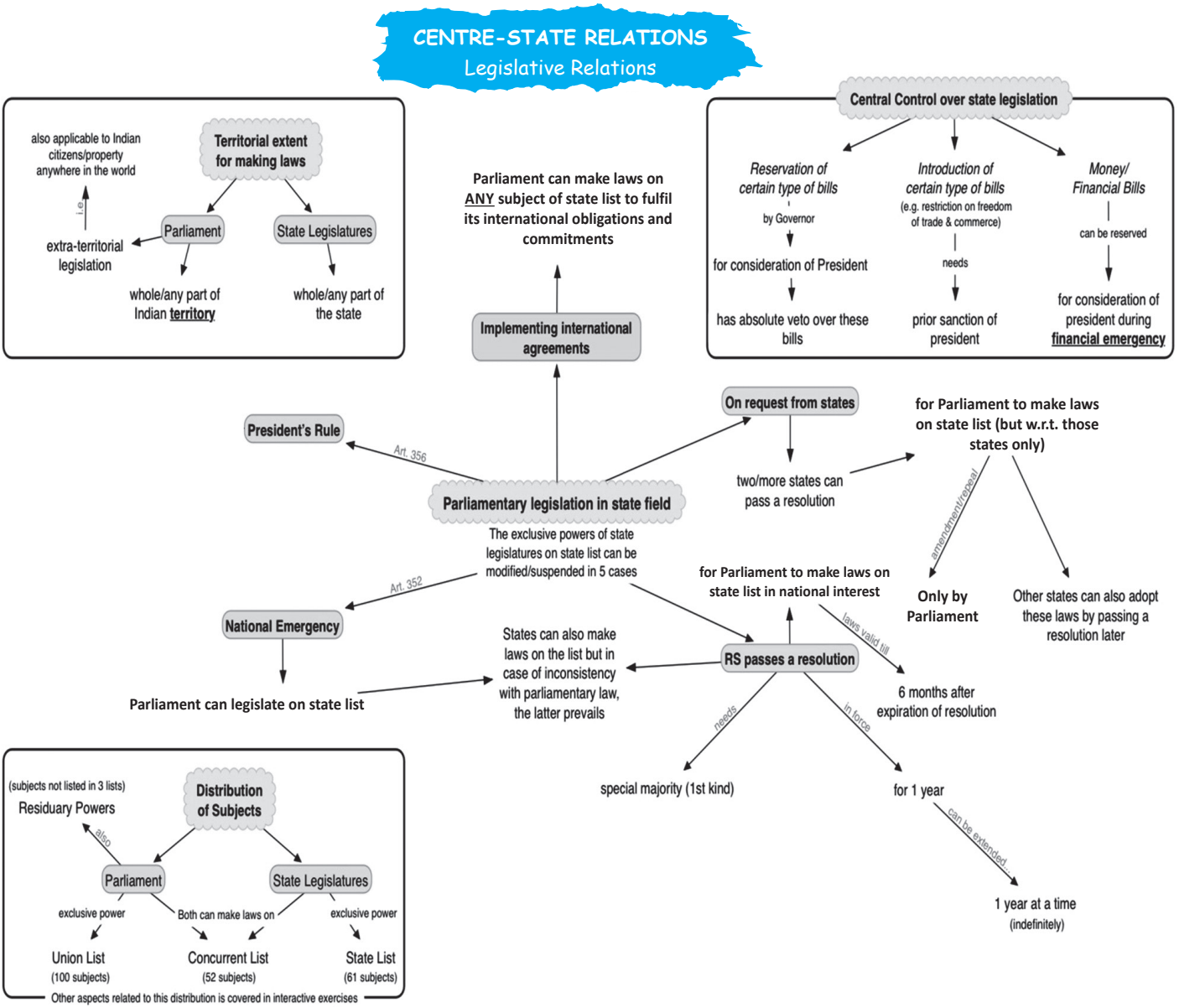

CENTRE-STATE RELATIONS
Legislative Relations
Territorial extent for making laws
also applicable to Indian citizens/property anywhere in the world
i.e.
extra-territorial legislation
Parliament
State Legislatures
whole/any part of Indian territory
whole/any part of the state
Parliament can make laws on ANY subject of state list to fulfil its international obligations and commitments
Implementing international agreements
Central Control over state legislation
Reservation of certain type of bills
by Governor
for consideration of President
has absolute veto over these bills
Introduction of certain type of bills
(e.g. restriction on freedom of trade & commerce)
needs
prior sanction of president
Money/ Financial Bills
can be reserved
for consideration of president during financial emergency
President's Rule
Art. 356
On request from states
two/more states can pass a resolution
for Parliament to make laws on state list (but w.r.t. those states only)
amendment/repeal
Only by Parliament
Other states can also adopt these laws by passing a resolution later
Parliamentary legislation in state field
The exclusive powers of state legislatures on state list can be modified/suspended in 5 cases
Art. 352
National Emergency
Parliament can legislate on state list
States can also make laws on the list but in case of inconsistency with parliamentary law, the latter prevails
for Parliament to make laws on state list in national interest
RS passes a resolution
laws valid till
6 months after expiration of resolution
needs
special majority (1st kind)
in force
for 1 year
can be extended
1 year at a time
(indefinitely)
(subjects not listed in 3 lists)
Residuary Powers
also
Distribution of Subjects
Parliament
State Legislatures
exclusive power
Both can make laws on
exclusive power
Union List
(100 subjects)
Concurrent List
(52 subjects)
State List
(61 subjects)
Other aspects related to this distribution is covered in interactive exercises

Fig. 13.4: Centre-State: Legisltive Relations

- **Compliance with Central Laws**
  - Every State's executive power must be exercised in a manner that adheres to the laws enacted by the Parliament and any other applicable laws. This general obligation ensures that States' actions align with the overarching framework established by the Central government.
- **Non-interference with Central Executive Power in States**
  - States must exercise their executive power in a way that does not hinder or prejudice the Central government's exercise of executive power within their territory. This specific obligation ensures that State actions do not obstruct the Central government's ability to fulfil its national responsibilities.

Central Government's Power to Issue Directions

- In both instances where State executive power is subject to restrictions, the Central government has the authority to issue directions to the concerned State. These directions are coercive in nature, meaning that the State is legally bound to comply.

Enforcement of Central Directions

- **Article 365** empowers the President to declare a situation where the government of a State cannot be carried on in accordance with the Constitution if the State fails to comply with or give effect to any directions issued by the Central government. In such circumstances, the President can impose the President's rule under **Article 356,** assuming control of the State's administration until the situation is rectified.

In essence, these constitutional provisions safeguard the Central government's ability to fulfil its responsibilities and maintain national unity while allowing the States to exercise their executive power within their respective spheres.

Centre's Directions to the States

Apart from the two scenarios mentioned earlier, the Central government has the authority to issue directives to the States regarding the exercise of their **executive power in the following situations:**

- **Construction and Maintenance of National or Military Communication Networks**
  - When a State undertakes the construction or maintenance of communication infrastructure deemed crucial for national or military purposes, the Central government can provide guidance and directives.
- **Protecting Railways within the State**
  - The Central government can issue directives to States regarding measures necessary to safeguard railways within their territories.
- **Education in Mother Tongue for Linguistic Minority Groups**
  - To ensure that children belonging to linguistic minority groups receive adequate primary education in their mother tongue, the Central government can direct States to implement specific schemes.
- **Welfare Schemes for Scheduled Tribes**
  - The Central government can issue directives to States regarding the formulation and execution of designated programs aimed at promoting the welfare of Scheduled Tribes.

The coercive enforcement mechanism outlined in Article 365, as mentioned earlier, also applies in these instances. This means that if a State fails to comply with or give effect to any directions issued by the Central government in these matters, the President may invoke Article 356 to impose President's rule in that State.

Mutual Delegation of Functions

- The division of legislative powers between the Centre and the States in India is characterised by rigidity. This means that the Centre cannot delegate its legislative powers to the States, and individual States cannot request the Parliament to enact laws on matters falling under the State List.
- In contrast, the distribution of executive power generally aligns with the distribution of legislative power. However, the rigid nature of this division can sometimes lead to conflicts between the two levels of government. To address this issue and prevent situations of deadlock, the Constitution provides for inter-governmental delegation of executive functions. This mechanism allows for flexibility and cooperation between the Central government and the States in the execution of administrative responsibilities.
- The Constitution enables the President, with the consent of the State government, to entrust any of the Central government's executive functions to that State government. Conversely, the Governor of a State may, with the consent of the Central government, entrust any of the State's executive functions to the Central government. This mutual delegation of administrative functions can be conditional or unconditional.

Feature	Legislative Power	Executive Power
Distribution	Rigid	Generally follows legislative power distribution
Flexibility	Limited	Inter-governmental delegation of executive functions
Purpose	Prevent encroachment on legislative spheres	Mitigate rigidity and avoid deadlock

- The inter-governmental delegation of executive functions serves as a crucial tool in maintaining a balance between the Central government and the States. It allows for a more efficient and effective administration of government affairs, ensuring that both levels of government can contribute to the overall well-being of the nation.

The Indian Constitution provides for two mechanisms for delegating executive functions between the Central government and the States: mutual agreements and legislative delegation.

Mutual Agreements

- The President, with the consent of the State government, can entrust any of the Central government's executive functions to that State government.
- Conversely, the Governor of a State, with the consent of the Central government, can entrust any of the State's executive functions to the Central government.

This mutual delegation of administrative functions can be conditional or unconditional

Legislative Delegation:

- The Parliament can enact laws that confer powers and impose duties on a State, or authorise the Central government to confer powers and impose duties on a State, regardless of the State's consent.

- State legislatures **cannot** confer powers or impose duties on the Central government through legislation.

In summary, the Central government can utilise both mutual agreements and legislative delegation to delegate executive functions to the States. However, States can only delegate executive functions to the Central government through mutual agreements. This distinction reflects the Central government's broader authority in the legislative sphere.

Cooperation Between the Centre and States

The Indian Constitution incorporates several provisions to foster cooperation and coordination between the Central government and the States:

- **Inter-State River Disputes**
  - The Parliament has the authority to establish mechanisms for adjudicating disputes or complaints arising from the use, distribution, and control of waters of inter-State rivers and river valleys. This provision ensures equitable management of water resources shared by multiple States.
- **Inter-State Council**
  - **Article 263** empowers the President to establish an Inter-State Council to investigate and discuss subjects of common interest between the Centre and the States. This council, established in 1990, serves as a platform for dialogue and collaboration on issues of mutual concern.
- **Full Faith and Credit Clause**
  - Public acts, records, and judicial proceedings of the Centre and every State are accorded full faith and credit throughout the territory of India. This provision promotes mutual recognition and acceptance of official documents and legal processes across the country.
- **Inter-State Freedom of Trade, Commerce, and Intercourse**
  - The Parliament has the power to appoint an appropriate authority to enforce the constitutional provisions guaranteeing inter-State freedom of trade, commerce, and intercourse. While no such authority has been established yet, the provision highlights the importance of the seamless movement of goods, services, and people across State borders.

These constitutional provisions underscore the commitment to foster a harmonious and collaborative relationship between the Centre and the States, ensuring that the nation's resources and opportunities are managed effectively for the collective benefit of all citizens.

All-India Services

- The Indian administrative structure, like any other federation, comprises distinct public services for the Centre, known as Central Services, and for individual States, known as State Services. Additionally, there exist All-India Services—the **Indian Administrative Service (IAS)**, the **Indian Police Service (IPS)**, and the **Indian Forest Service (IFS)**. Members of these All-India Services hold key positions in both the Centre and the States, serving both entities in turn. However, their recruitment and training are handled by the Centre.
- These All-India Services are subject to joint control by the Central government and their State counterparts. While the **Central government holds ultimate control, the immediate control rests with the State governments**.
- In 1947, the Indian Civil Service (ICS) was replaced by the IAS, and the Indian Police (IP) was replaced by the IPS, both being recognized as All-India Services by the Constitution. In 1966, the Indian Forest Service (IFS) was established as the third All-India Service.
- **Article 312 of the Constitution empowers the Parliament to create new All-India Services upon a resolution to that effect passed by the Rajya Sabha.**

Irrespective of their distribution among different States, each of these three All-India Services forms a single service with common rights, status, and uniform pay scales throughout the country.

While the All-India Services, by restricting the autonomy and patronage of the States, appear to contravene the principle of federalism enshrined in the Constitution, their existence is justified on the grounds that:

- They contribute to maintaining high standards of administration in both the Centre as well as the States. They help ensure uniformity in the administrative system across the country.
- They facilitate liaison, cooperation, coordination, and joint action on issues of common interest between the Centre and the States.

Public Service Commissions

The relationship between the Centre and the States in the domain of public service commissions is characterized by the following points:

- **Appointment and Removal of State Public Service Commission Members**
  - The Governor of a State appoints the Chairman and members of a State public service commission, but only the President can remove them from office.
- **Establishment of Joint State Public Service Commissions**
  - At the request of the concerned State legislatures, the Parliament can establish a Joint State Public Service Commission (JSPSC) to serve two or more States. The President appoints the chairman and members of the JSPSC.

- **UPSC's Assistance to States**
  - Upon request from the Governor of a State and with the approval of the President, the Union Public Service Commission (UPSC) can assist the State in meeting its recruitment needs.
- **UPSC's Assistance in Joint Recruitment Schemes**
  - When requested by two or more States, the UPSC assists them in developing and implementing joint recruitment schemes for any services requiring candidates with specialised qualifications.
- **Integrated Judicial System**
  - Despite India's dual polity, characterised by the division of power between the Central government and the States, the country does not adhere to a dual system of administering justice. Instead, the Constitution establishes a unified judicial system with the Supreme Court at the apex and the State high courts below it. This single system of courts enforces both Central laws and State laws, ensuring uniformity and consistency in the application of legal principles.
  - The judges of a State high court are appointed by the President in consultation with the Chief Justice of India and the Governor of the State. The President also holds the authority to transfer and remove high court judges.
  - To address the needs of multiple States, the **Parliament can establish a common high court to serve two or more States.** For instance, Maharashtra and Goa share a common high court, as do Punjab and Haryana.
  - This unified judicial system plays a crucial role in upholding the rule of law, ensuring that the rights and liberties of citizens are protected regardless of their location or the legal issue at hand. It also promotes national unity by fostering a common understanding and application of legal principles across the country.

Relations During Emergencies

- **National Emergency (Article 352)**
  - During a national emergency proclaimed under Article 352, the Centre gains the authority to issue executive directives to any State on any matter. This essentially grants the Central government comprehensive control over State governments, without suspending their operations.
- **President's Rule (Article 356)**
  - When President's Rule is imposed in a State under Article 356, the President can assume the functions of the State government and the powers vested in the Governor or any other executive authority in the State. This effectively places the State administration under direct Central control.

Financial Emergency (Article 360)

- During a financial emergency declared under Article 360, the Central government can direct States to adhere to principles of financial propriety and issue other necessary directives, including the reduction of salaries for State officials. This ensures that States maintain financial stability and align their financial practices with national economic goals.

Other Provisions

Article 355: Protection of States against External Aggression and Internal Disturbance

Article 355 imposes two primary duties on the Central government:

- **Protection from External Aggression**
  - The Central government is responsible for safeguarding every State against external threats, such as war or foreign invasion. This involves maintaining a strong military and diplomatic presence to deter and repel aggression.
- **Ensuring Constitutional Governance**
  - The Central government has the obligation to ensure that the government of each State functions in accordance with the provisions of the Constitution. This includes upholding constitutional principles, preventing misuse of power, and maintaining law and order.

Governor as an Agent of the Centre

The Governor of a State, appointed by the President, serves as a crucial link between the Central government and the State administration. While acting as the constitutional head of the State, the Governor also plays a dual role as an agent of the Centre.

- **Reporting to the Centre**
  - The Governor regularly submits reports to the Central government on the administrative affairs of the State, keeping the Centre informed about the State's activities and potential issues.
- **Acting on Central Directives**
  - The Governor can be called upon by the President to issue ordinances or take other actions to ensure compliance with Central laws or directives. This allows the Centre to exert influence over the State administration when necessary.

Appointment and Removal of the State Election Commissioner (Article 243K)

The State Election Commissioner is appointed by the Governor of the State but can only be removed by the President in a manner similar to the removal of a High Court judge. This arrangement ensures that the conduct of elections of Panchayats and Municipalities in a State remains free and fair.

Extra Constitutional Mechanisms

In addition to the constitutional mechanisms that facilitate cooperation and coordination between the Central government and the States, there are a number of extra-constitutional devices that serve this purpose. These devices include various advisory bodies and conferences held at the Central level.

Extra-Constitutional Advisory Bodies

These non-constitutional advisory bodies serve as platforms for consultation and exchange of ideas between the Central government and the States. They provide a forum for discussing issues of common interest and developing strategies for addressing them.

Some of the key extra-constitutional advisory bodies include

- **NITI Ayog (National Institution for Transforming India):** This body replaced the Planning Commission and is tasked with providing strategic and technical advice to the Central government and the States on various socio-economic issues.
- **National Integration Council:** This council aims to promote national unity and integration by fostering understanding and cooperation among people of different religions, castes, and regions.
- **Central Council of Health and Family Welfare:** This council assists in formulating and coordinating policies related to public health and family welfare.
- **Central Council of Local Government:** This council provides a platform for discussion and collaboration on issues related to urban and rural local governance.
- **Zonal Councils:** These councils facilitate coordination among States within a particular region.
- **North-Eastern Council:** This council focuses on the specific developmental needs of the North-Eastern States.
- **Central Council of Indian Medicine:** This council promotes and regulates the practice of Indian medicine (Ayurveda).
- **Central Council of Homoeopathy:** This council promotes and regulates the practice of homoeopathy.
- **Transport Development Council:** This council advises the Central government on matters related to transport policy and development.
- **University Grants Commission (UGC):** This statutory body provides financial assistance and maintains standards of higher education in India.

Conferences

- These conferences provide regular opportunities for the Central government and the States to discuss and address important issues. They cover a wide range of topics, including law, education, health, and security. Some of the key conferences include:
- **Governors' Conference:** The President presides over this conference, which brings together Governors from all States.
- **Chief Ministers' Conference:** The Prime Minister presides over this conference, which brings together chief ministers from all States.
- **Chief Secretaries' Conference:** The Cabinet Secretary presides over this conference, which brings together chief secretaries from all States.
- **Conference of Inspectors-General of Police:** This conference brings together the highest-ranking police officers from all States to discuss issues related to law and order.
- **Chief Justices' Conference:** The Chief Justice of India presides over this conference, which brings together chief justices of all high courts.
- **Conference of Vice-Chancellors:** This conference brings together vice-chancellors of all universities in India to discuss issues related to higher education.
- **Home Ministers' Conference:** The Central Home Minister presides over this conference, which brings together home ministers from all States to discuss issues related to internal security.
- **Law Ministers' Conference:** The Central Law Minister presides over this conference, which brings together law ministers from all States to discuss legal issues.

These extra-constitutional devices play a crucial role in facilitating cooperation and coordination between the Centre and the States. They provide platforms for consultation, exchange of ideas, and joint action on matters of common interest.

Challenges in Administrative Federalism

- **Coordination and cooperation**
  - It can be difficult to coordinate and cooperate between different levels of government, especially when there is disagreement about policy or priorities. This can lead to duplication of effort, inefficiency, and conflict.
- **Accountability**
  - It can be difficult to hold different levels of government accountable for their actions. This is because there is often a lack of clarity about who is responsible for what and because different levels of government may have different priorities.
- **Equity**
  - It can be difficult to ensure that all citizens have equal access to government services and benefits, especially when there are disparities in wealth and resources between different regions.
- **Fragmentation of Policy**
  - Administrative federalism can lead to fragmentation of policy initiatives, with different levels of government pursuing varying approaches to address common issues. This fragmentation can result in inconsistencies, inefficiencies, and a lack of cohesion in overall governance.

❑ **Overlapping Jurisdictions**

- The division of power between the national and subnational governments can create overlapping jurisdictions, leading to conflicts in regulatory frameworks, standards, and enforcement mechanisms. This can cause confusion for businesses and citizens, hindering economic activity and compliance.

Positive changes in Administrative Federalism

IGNITE YOUR MIND

Picture a grand treasure hunt across India. The central government and state governments are teams searching for treasures of knowledge, unity, and progress. What do you think the challenges they might face, and how can they work together to find the treasures?

❑ **A greater emphasis on cooperation and collaboration**

- There has been a growing recognition of the need for different levels of government to work together to solve problems. This has led to the development of new mechanisms for cooperation, such as intergovernmental agreements and memorandums of understanding.

❑ **A greater focus on accountability**

- There has been a growing demand for greater accountability from government officials. This has led to the development of new measures of accountability, such as performance indicators and citizen surveys.

❑ **A greater commitment to equity**

- There has been a growing recognition of the need to ensure that all citizens have equal access to government services and benefits. This has led to the development of new policies and programs aimed at reducing inequality.

❑ **Innovation and Experimentation**

- Encouragement of innovation and experimentation at the subnational level has allowed for the development of effective policy solutions tailored to local contexts. These innovations can then be shared and disseminated across jurisdictions.

❑ **Decentralisation of Decision-Making**

- In some cases, decentralisation of decision-making has empowered local governments to address issues specific to their regions while still adhering to national standards and frameworks. This balance between autonomy and coordination has proven effective in certain areas.

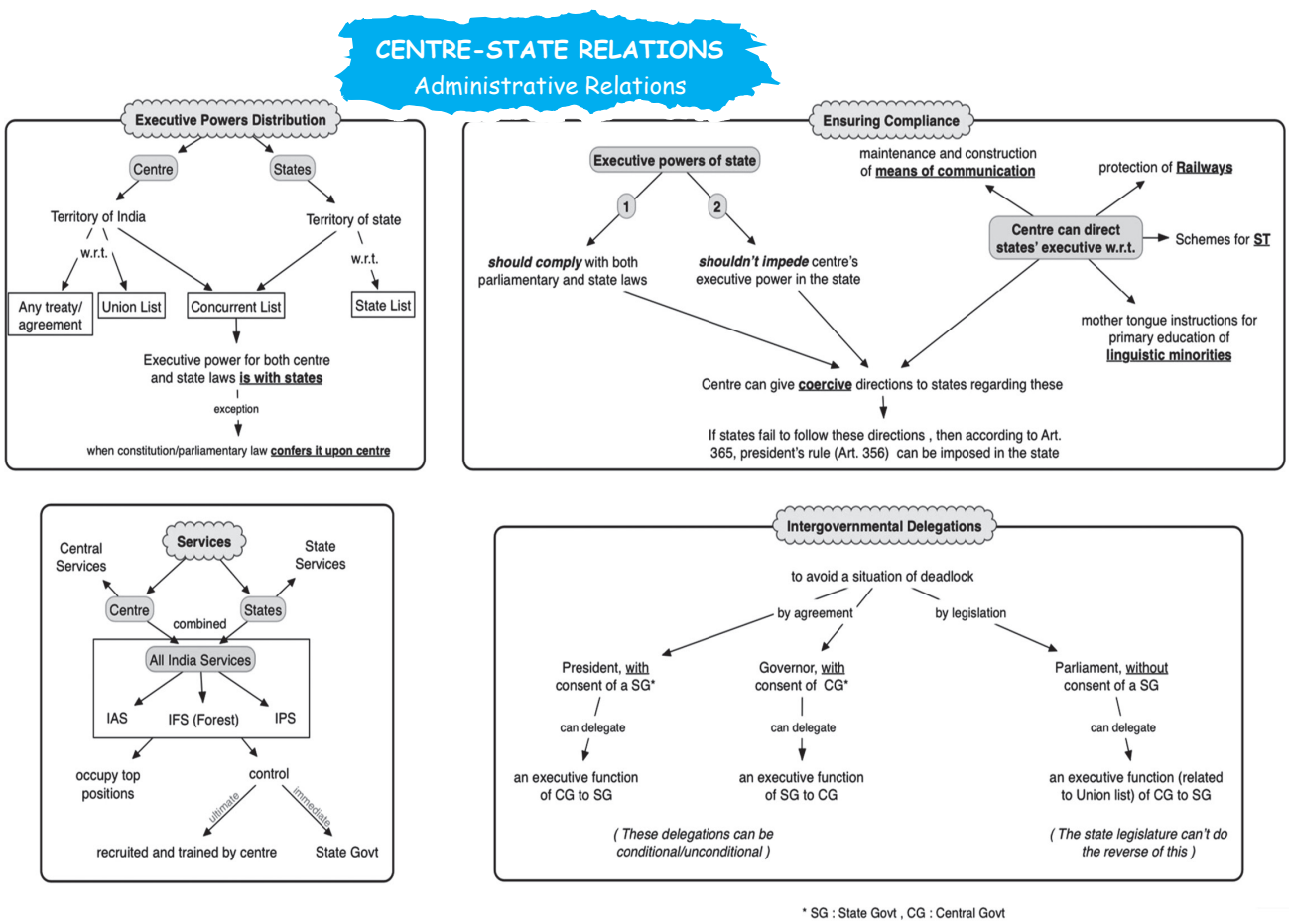
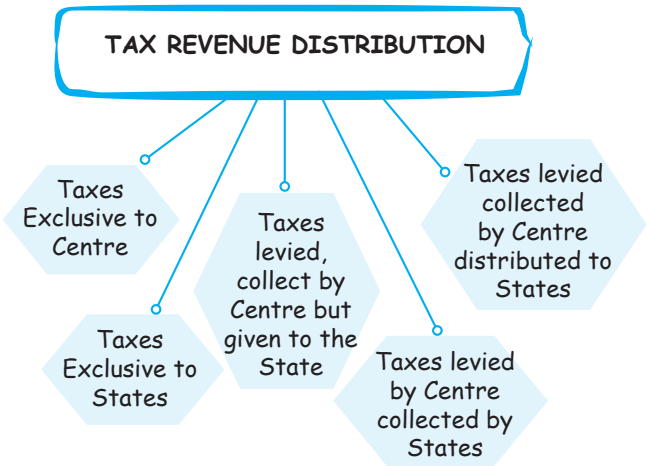

CENTRE-STATE RELATIONS
Administrative Relations
Executive Powers Distribution
Centre
States
Territory of India
Territory of state
w.r.t.
w.r.t.
Any treaty/ agreement
Union List
Concurrent List
State List
Executive power for both centre and state laws is with states
exception
when constitution/parliamentary law confers it upon centre
Ensuring Compliance
Executive powers of state
1
2
should comply with both parliamentary and state laws
shouldn't impede centre's executive power in the state
maintenance and construction of means of communication
protection of Railways
Centre can direct states' executive w.r.t.
Schemes for ST
mother tongue instructions for primary education of linguistic minorities
Centre can give coercive directions to states regarding these
If states fail to follow these directions , then according to Art. 365, president's rule (Art. 356) can be imposed in the state
Services
Central Services
State Services
Centre
States
combined
All India Services
IAS
IFS (Forest)
IPS
occupy top positions
control
ultimate
immediate
recruited and trained by centre
State Govt
Intergovernmental Delegations
to avoid a situation of deadlock
by agreement
by legislation
President, with consent of a SG*
Governor, with consent of CG*
Parliament, without consent of a SG
can delegate
can delegate
can delegate
an executive function of CG to SG
an executive function of SG to CG
an executive function (related to Union list) of CG to SG
(These delegations can be conditional/unconditional)
(The state legislature can't do the reverse of this)
* SG : State Govt , CG : Central Govt

Fig. 13.5: Centre-State: Administrative Relations

Financial Relations

The **Part XII** of the Indian Constitution, encompassing **Articles 268 to 293**, outlines the financial relationship between the Centre and the States. However, there are additional provisions scattered throughout the Constitution that also address this subject.

Allocation of Taxing Powers


TAX REVENUE DISTRIBUTION
Taxes Exclusive to Centre
Taxes Exclusive to States
Taxes levied, collect by Centre but given to the State
Taxes levied by Centre collected by States
Taxes levied collected by Centre distributed to States

The Indian Constitution meticulously divides the taxing powers between the Centre and the States, ensuring a balance between national fiscal needs and State-level autonomy.

- **Union List**
  - The Parliament holds exclusive authority to levy taxes on subjects enumerated in the Union List, comprising 13 subjects. This centralized approach empowers the Centre to implement national policies seamlessly.
- **State List**
  - The State legislatures enjoy exclusive power to impose taxes on subjects listed in the State List, encompassing 18 subjects. This decentralised approach grants States the flexibility to tailor their fiscal policies to address the specific needs and priorities of their citizens, promoting local responsibility and autonomy in managing finances.
- **Concurrent List**
  - Unlike other legislative matters, the Concurrent List does not include any tax entries. This implies that concurrent jurisdiction is not applicable to tax legislation. However, the **101st Amendment Act of 2016** introduced an exception by making a special provision for the Goods and Services tax (GST). This amendment grants concurrent power to both the Parliament and State legislatures to enact laws governing the GST.
- **Residual Power of Taxation**
  - The Constitution vests the Parliament with the residual power of taxation, authorising it to impose taxes not enumerated in any of the three lists. Under this provision, the Parliament has levied gift tax, wealth tax, and expenditure tax.

The Indian Constitution establishes a clear distinction between the power to levy and collect a tax and the power to appropriate the proceeds of that tax. This distinction is evident in the case of income tax, which is levied and collected by the Central government but its proceeds are shared between the centre and the States.

To safeguard the economic unity of the nation and prevent discriminatory taxation practices, the **Constitution imposes certain restrictions on the taxing powers of the States:**

- **Ceiling on Professional Taxes**
  - State legislatures are permitted to levy taxes on professions, trades, callings, and employment. However, the total amount of such taxes payable by any individual cannot exceed ₹2,500 per annum. This restriction aims to prevent excessive taxation that could hinder economic mobility and entrepreneurship.
- **Restrictions on Taxes on Goods and Services**
  - State legislatures are prohibited from imposing taxes on the supply of goods or services in two specific scenarios:
    - **Out-of-State Supplies:** Taxes cannot be levied on the supply of goods or services that take place outside the State's borders. This restriction prevents States from imposing taxes on economic activities beyond their jurisdiction.
    - **Imports and Exports:** Taxes cannot be imposed on the supply of goods or services that occur in the course of import or export. This restriction safeguards the free movement of goods and services across State boundaries, promoting national economic integration. The Parliament holds the authority to formulate the principles for determining when a supply of goods or services falls under the category of out-of-State supplies, imports, or exports. This centralized approach ensures consistency and clarity in the application of tax laws.
- **Taxation of Electricity**
  - State legislatures can impose taxes on the consumption or sale of electricity. However, this power is subject to certain limitations:
    - **Central Government Consumption or Sale:** Taxes cannot be imposed on electricity that is consumed by the Centre or sold to the Centre. This restriction ensures that the operations are not burdened by State taxes.
    - **Railway-Related Consumption or Sale:** Taxes cannot be imposed on electricity that is consumed in the construction, maintenance, or operation of any railway by the Centre or by the concerned railway company, or sold to the Centre or the railway company for the same purpose. This restriction protects the smooth functioning of the national railway network.

- **Taxes on Inter-State Water Resources**
  - State legislatures can impose taxes on the consumption, distribution, or sale of water or electricity that is stored, generated, consumed, distributed, or sold by any authority established by Parliament for regulating or developing any interstate river or river valley. However, such laws require the President's approval to become effective. This safeguard ensures that the management of inter-State water resources is not hampered by conflicting tax policies.

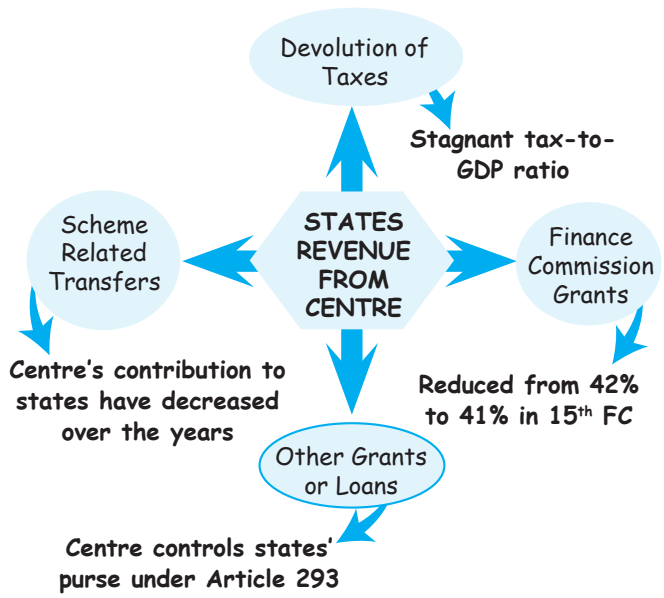

Devolution of Taxes
Stagnant tax-to-GDP ratio
STATES REVENUE FROM CENTRE
Scheme Related Transfers
Centre's contribution to states have decreased over the years
Finance Commission Grants
Reduced from 42% to 41% in 15th FC
Other Grants or Loans
Centre controls states' purse under Article 293

Fig. 13.6: States Revenue from Center

Evolution of Tax Distribution in India

The 80th and 101st Amendment Acts: Reshaping Tax Distribution and Introducing GST

The 80th and 101st Amendment Acts brought about significant changes in the Indian Constitution related to tax distribution between the Central government and States.

80th Amendment Act (2000):

Implemented the recommendations of the 10th Finance Commission, increasing the States' share of tax revenues. This amendment, known as the '**Alternative Scheme of Devolution**', retrospectively came into effect on April 1, 1996, allocating 29% of income from certain Central taxes and duties, like Corporation Tax and Customs Duties to the States.

101st Amendment Act (2016):

Transformed India's tax system by introducing the Goods and Services Tax (GST), a comprehensive indirect tax. This amendment granted concurrent taxing powers to both the Parliament and State legislatures for levying GST on the supply of goods and services, replacing various Central and State indirect taxes. The GST aimed to eliminate tax cascading and create a unified national market.

Subsumption of Taxes under GST:

Facilitated the incorporation of Central and State indirect taxes into the GST framework, including Central Excise Duty, Additional Excise Duties, Service Tax, VAT, Entertainment Tax, Purchase Tax, and Luxury Tax.

Constitutional Amendments and Service Tax:

Deleted Article 268-A and Entry 92-C from the Union List, which previously governed service tax. Introduced by the 88th Amendment Act of 2003, these provisions outlined the levy, collection, and appropriation of service tax by the Central and States.

Constitutional arrangements of Taxation between the Centre and States:

The Indian Constitution outlines a framework for distributing tax revenues between the Central government and the States. This framework ensures that both levels of government have the necessary financial resources to fulfil their respective roles in governing and serving the Indian people effectively.

- **Taxes Levied by the Centre but Collected and Appropriated by the States (Article 268)**
  - These taxes, such as stamp duties, are levied by the Central government but collected and appropriated by the States where they are generated. The proceeds of these taxes do not form part of the Consolidated Fund but are instead assigned directly to the respective States. This category includes the stamp duties on bills of exchange, cheques, promissory notes, policies of insurance, transfer of shares and others.
- **Taxes Levied and Collected by the Centre but Assigned to the States (Article 269)**

This category includes taxes on inter-State trade and commerce, such as taxes on the sale or purchase of goods and consignment taxes. These taxes are levied and collected by the Centre, but the net proceeds are assigned to the concerned States according to principles laid down by the Parliament.

- **Levy and Collection of Goods and Services Tax (GST) in Inter-State Trade or Commerce (Article 269A)**
  - The Goods and Services Tax (GST) on inter-State supplies is levied and collected by the Centre. However, this tax is divided between the Centre and the States in a manner determined by the Parliament on the recommendations of the GST Council. The Parliament is also empowered to define the place of supply and determine when a supply of goods or services takes place in the course of inter-State trade or commerce.
- **Taxes Levied and Collected by the Center but Distributed**

between the Center and the States (Article 270)

- This category encompasses all taxes and duties listed in the Union List, except for those mentioned in Articles 268, 269, and 269-A (discussed above) and surcharges on taxes and duties referred to in Article 271 (discussed below). The manner of distributing the net proceeds of these taxes and duties is prescribed by the President on the recommendation of the Finance Commission.

- **Surcharge on Certain Taxes and Duties for Purposes of the Center (Article 271)**
  - The Parliament can levy surcharges on taxes and duties referred to in Articles 269 and 270. The proceeds of these surcharges go exclusively to the Central government, and the States have no share in them. However, the Goods and Services Tax (GST) is exempted from this surcharge.
- **Taxes Levied and Collected and Retained by the States**
  - These taxes, enumerated in the State List, are levied, collected, and retained by the States. They include taxes on land, agricultural income, mineral rights, electricity consumption, sale of certain goods, professions, trades, callings, and employment, and entertainment and amusements.

DISTRIBUTION OF NON-TAX REVENUE

Non-Tax Revenues of the Central Government

The Central Government's non-tax revenues are primarily derived from:

- **Posts and Telegraphs**
- **Railways:** Revenue from passenger and freight transportation services.
- **Banking:** Profits earned by State-owned banks and financial institutions.
- **Broadcasting:** Revenue from broadcasting licences and fees.
- **Coinage and Currency:** Income from minting coins and printing currency.
- **Central Public Sector Enterprises:** Dividends and profits from State-owned enterprises.
- **Escheat and Lapse:** Revenue from unclaimed property and lapsed accounts.
- **Other Sources:** Miscellaneous receipts from various sources.

Non-Tax Revenues of State Governments

The State Governments' non-tax revenues are primarily derived from:

- **Irrigation:** Revenue from water usage charges and irrigation projects.
- **Forests:** Income from forest products and timber sales.
- **Fisheries:** Revenue from fishing licences and fees.
- **State Public Sector Enterprises:** Dividends and profits from State-owned enterprises.
- **Escheat and Lapse:** Revenue from unclaimed property and lapsed accounts.
- **Other Sources:** Miscellaneous receipts from various sources.

Grants-in-Aid to the States

In addition to the distribution of taxes between the Central and State governments, the Constitution allows for grants-in-aid to States from Central resources. These grants come in two forms: **statutory grants and discretionary grants.**

Statutory Grants (Article 275)

It grants authority to the Parliament to offer financial assistance to States in need. These grants are not uniformly provided to every State, and varying amounts may be assigned to different States. The funds from these grants are drawn from the Consolidated Fund of India on an annual basis.

Beyond this general provision, the Constitution also mandates specific grants aimed at promoting the welfare of scheduled tribes within a State or elevating the standard of administration in scheduled areas, including the State of Assam.

The Finance Commission is responsible for recommending the allocation of statutory grants under Article 275, both the general and specific grants, to the States.

Key Points:

- Article 275 empowers the Parliament to provide financial assistance to States in need.
- Grants are not provided to every State, and different amounts may be allocated to different States.
- Grants are charged to the Consolidated Fund of India each year.
- Specific grants are also provided to promote the welfare of scheduled tribes and to raise the level of administration in scheduled areas.
- The Finance Commission recommends the allocation of grants under Article 275.

Discretionary Grants (Article 282)

It empowers both the Centre and the States to offer grants for any public purpose, regardless of whether it falls within their legislative jurisdiction.

Within this framework, the Centre can provide grants to the States, and it is important to emphasise that such grants are not obligatory, the decision rests entirely on the discretion of the Centre.

IGNITE YOUR MIND

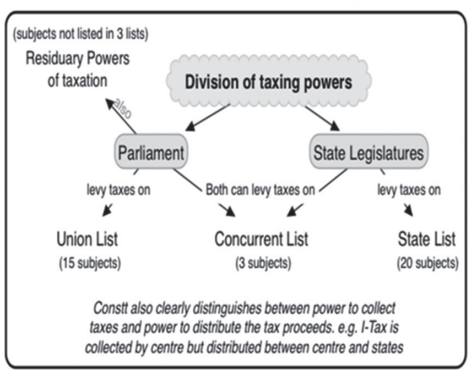
In an increasingly globalized world, where states are interconnected and interdependent like never before, how can India effectively balance the need for national unity and coherence with the growing aspirations for regional autonomy and the specific needs of diverse communities?

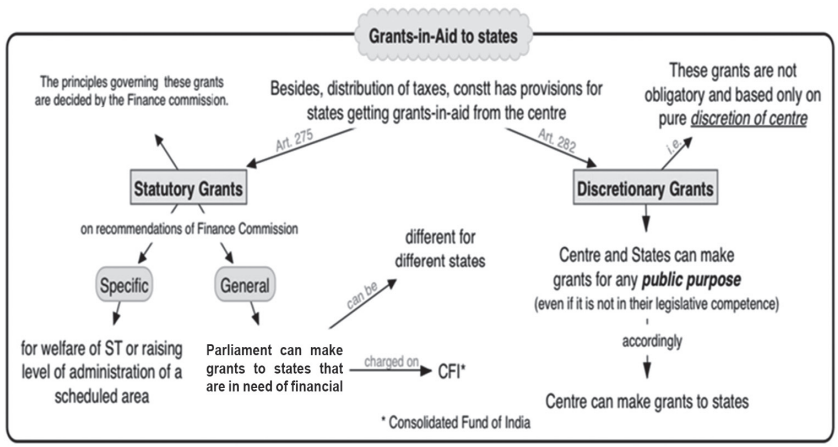
It's crucial to highlight that discretionary grants constitute the majority of Central grants to the States, surpassing statutory grants in terms of overall funding.

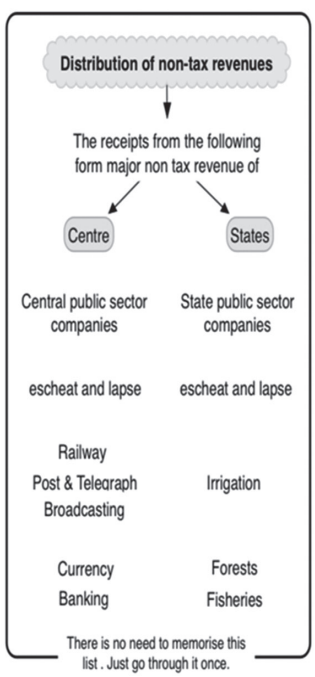
Additional Grants-in-aid

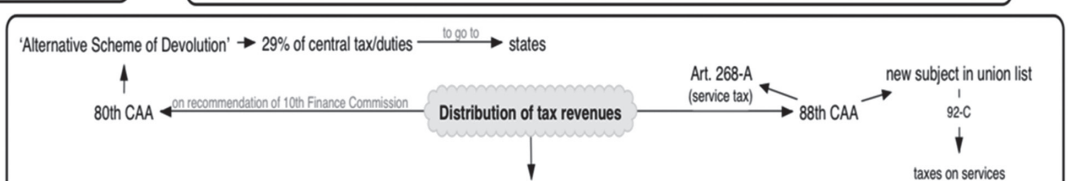
The Indian Constitution also provides for a third type of grants-in-aid, but for a temporary duration. This provision involves grants in lieu of export duties on jute and jute products to the States of Assam, Bihar, Orissa, and West Bengal. These grants were intended to be provided for a period of ten years from the commencement of the Constitution. The sums for these grants were charged to the Consolidated Fund of India and allocated to the States based on the recommendations of the Finance Commission.

CENTRE-STATE RELATIONS
Financial Relations


(subjects not listed in 3 lists)
Residuary Powers of taxation
Division of taxing powers
also
Parliament
State Legislatures
levy taxes on
Both can levy taxes on
levy taxes on
Union List
(15 subjects)
Concurrent List
(3 subjects)
State List
(20 subjects)
Constt also clearly distinguishes between power to collect taxes and power to distribute the tax proceeds. e.g. I-Tax is collected by centre but distributed between centre and states


Grants-in-Aid to states
The principles governing these grants are decided by the Finance commission.
Besides, distribution of taxes, constt has provisions for states getting grants-in-aid from the centre
These grants are not obligatory and based only on pure discretion of centre
Art. 275
Art. 282
i.e.
Statutory Grants
Discretionary Grants
on recommendations of Finance Commission
Specific
General
different for different states
can be
Centre and States can make grants for any public purpose
(even if it is not in their legislative competence)
accordingly
for welfare of ST or raising level of administration of a scheduled area
Parliament can make grants to states that are in need of financial
charged on
CFI*
Centre can make grants to states
* Consolidated Fund of India





Article	Taxes levied by	Collected by	Distribution	Areas	Imp. Points
268	Centre	States	Appropriated by States	• **Stamp duties** on transfer of shares, etc. • **Excise duties** on medicinal and toilet preparations contain	These don't form part of the consolidated fund of India but assigned to the state where they are collected.
268-A	Centre	Centre and States	Appropriated by Centre and States	• **Service Tax**	Principle for collection and appropriation are **formed by Parliament.**
269	Centre	Centre	Assigned to States	• Taxes on sale /purchase of goods and consignment of goods in course of **inter-state trade/commerce**	These don't form part of the consolidated fund of India but assigned to the concerned states in accordance with principles laid down by Parliament.
270	Centre	Centre	Between Centre and States	• **All taxes and duties referred to in the Union List,** except the duties and taxes referred to in Articles 268 and 269	These are distributed by the president as per the recommendations of the **Finance Commission.**
271	–	–	Centre	• **Surcharges** on taxes /duties mentioned in Art .269and 270above	These can be levied by Parliament for **exclusive purposes of the centre.**
	States	States	States	• Subjects mentioned in **state list** like land revenue, agricultural income, tolls, etc	

Fig. 13.7: Centre-State: Financial Relations

Goods and Services Tax Council

The **101st Amendment Act of 2016** stipulated the creation of a Goods and Services Tax Council, known as the GST Council. The constitutional authority to constitute the GST Council is vested in the President, as outlined in **Article 279A** through an order. The GST Council is a joint forum of the Centre and the States of India. It is responsible for overseeing the implementation of the Goods and Services Tax (GST) in the country.

Composition of the GST Council

The GST Council consists of the following members:

- The Union Finance Minister as the Chairperson.
- The Union Minister of State in-charge of Revenue or Finance.
- The Minister in-charge of Finance or Taxation or any other Minister nominated by each State government.

Supreme Court Ruling:

- The Supreme Court has ruled that the recommendations of the GST Council are not binding on either the Union or the State Governments.
- This means that the States can reject decisions made by the GST Council and set different rates for goods and services in their jurisdiction.

Significance of the Supreme Court's Judgement:

- The Supreme Court's judgement has increased the bargaining power of the State governments.
- It will prevent the union government from disregarding the interests of States.

Finance Commission

The Finance Commission (FC) is a constitutional body **(Article 280)** in India that determines how tax revenue is distributed between the Centre and States, as well as among the States themselves. The FC is established every five years by the President of India. The 15th Finance Commission was constituted in November 2017 and its recommendations cover a period of five years from 2021-22 to 2025-26.

Key Recommendations of the 15th Finance Commission:

- **Vertical Devolution**
  - The FC recommended maintaining the vertical devolution rate at 41%, which is the same as in its interim report for 2020-21.
- **Horizontal Devolution**
  - For horizontal devolution, the FC suggested using a formula that weighs demographic performance (12.5%), income (45%), population and area (15% each), forest and ecology (10%), and tax and fiscal efforts (2.5%).
- **Revenue Deficit Grants to States**
  - The FC recommended providing revenue deficit grants to States that are unable to meet their fiscal needs after considering their own tax and non-tax resources and tax devolution.
- **Performance-Based Incentives and Grants to States**
  - The FC recommended providing performance-based incentives and grants to States in four areas: social sector (health and education), rural economy (agriculture and rural roads), governance and administrative reforms (judiciary, statistics, and aspirational districts and blocks), and power sector (additional borrowing window).
- **Fiscal Space for Center**
  - The FC's transfers account for about 34% of the Central government's estimated Gross Revenue Receipts, leaving it with enough fiscal space to meet its resource requirements and spending obligations.
- **Grants to Local Governments**
  - The FC recommended providing grants to local governments for municipal services, local government bodies, incubation of new cities, and health.

Borrowing by the Centre and the States

The Indian Constitution outlines the borrowing powers of the Central Government and the States as follows:

- **Central Government Borrowing:**
  - The Central Government can borrow either within India or outside the country.
  - The Central Government can borrow upon the security of the Consolidated Fund of India.
  - The Central Government can provide guarantees for loans.
  - The Parliament sets the limits for the Central Government's borrowing and guarantee powers.
- **State Government Borrowing:**
  - State governments can borrow only within India.
  - State governments can borrow upon the security of the Consolidated Fund of the State.
  - State governments can provide guarantees for loans.
  - The respective State legislatures set the limits for State governments' borrowing and guarantee powers.
- **Central Government Assistance to States:**
  - The Central Government can make loans to any State.
  - The Central Government can provide guarantees for loans raised by any State.
  - The funds for such loans are charged on the Consolidated Fund of India.

- **Restrictions on State Borrowing:**
  - A State cannot raise any loan without the consent of the Central Government if there is still outstanding any part of a loan made to the State by the Central Government or in respect of which a guarantee has been given by the Central Government.
- **Key Points:**
  - The Central Government has more extensive borrowing powers than State governments.
  - The Parliament and State legislatures play a crucial role in regulating borrowing activities.
  - States are subject to Central Government oversight regarding borrowing.

Intergovernmental Tax Immunities in the Indian Constitution

The Indian Constitution, like other federal constitutions, upholds the principle of 'immunity from mutual taxation' and outlines specific provisions in this regard:

- **Exemption of Central Property from State Taxation**
  - The property of the Centre is exempt from all taxes imposed by a State or any authority within a State, including municipalities, district boards, and panchayats. This exemption applies to all forms of property, including lands, buildings, chattels, shares, debts, and any other asset with monetary value. The property may be used for either sovereign purposes (such as the armed forces) or commercial purposes.
  - However, the Parliament has the authority to lift this exemption, allowing States to tax Centre's property under certain circumstances.
- **Exemption of State Property or Income from Central Taxation**
  - The property and income of a State are exempt from Central taxation, regardless of whether they arise from sovereign or commercial activities. However, if a State engages in commercial operations, the Centre can impose taxes on those operations, provided Parliament authorises it.
  - On the other hand, the Central Government cannot levy taxes on the property or income of local authorities within a State. Additionally, the Central Government can tax corporations and companies owned by a State.
- **Supreme Court's Advisory Opinion**
  - In an advisory opinion issued in 1963, the Supreme Court clarified that the immunity granted to States regarding Central taxation does not extend to customs duties or excise duties. This implies that the Central Government can impose customs duties on goods imported or exported by a State, and excise duties on goods produced or manufactured by a State.
- **Key Points**
  - The Indian Constitution establishes a system of mutual tax immunity between the Centre and the States.
  - The Central Government's property is exempt from State taxation, but this exemption can be lifted by Parliament.
  - State property and income are generally exempt from Central taxation, but commercial operations of a State can be taxed by the Central Government.

Effects of Emergencies on Centre-State Financial Relations

The distribution of financial resources between the Centre and the States in India is altered during periods of emergency. These changes are as follows:

National Emergency

When a national emergency is declared under **Article 352**, the President has the authority to modify the constitutional allocation of revenues between the Centre and the States. This implies that the President can either cut back on or completely eliminate the transfer of funds (both tax sharing and grants-in-aid) from the Centre to the States. This change remains in effect until the end of the fiscal year in which the emergency is lifted.

Financial Emergency

When a financial emergency is declared under **Article 360**, the Centre can instruct the States to:

- Adhere to the specified canons of financial propriety.
- Reduce the salaries and allowances of all classes of employees working in the State.
- Submit all money bills and other financial bills for the President's consideration.
- **Key Points:**
  - The President can alter the distribution of revenues between the Centre and the States during emergencies.
  - The Centre can issue directives to the States regarding financial matters during emergencies.
  - These measures are intended to ensure financial stability during times of crisis.

Challenges in Fiscal Federalism in India

The principles of fiscal federalism in India have been undermined by a series of steps taken by the Central Government, leading to increasing dominance in fiscal policies. This has been evident in:

- **Increasing State's Share in Centrally Sponsored Schemes (CSS):**
  - The State Government's share in CSS has been increasing, leaving States with a smaller proportion of funds for critical development programs.

- **Demonetization without Adequate Consultation:**
  - The sudden implementation of demonetization in 2016 without proper consultation with States caused significant disruptions to the State economies.
- **Outsourcing of Statutory Functions:**
  - The Central Government's outsourcing of statutory functions under the Smart Cities Mission has raised concerns about States' autonomy and control over their development initiatives.
- **Declining States' revenue from Petroleum products:**
  - The Union government's share in the total contribution of the petroleum sector has risen to 68%, while States' share has dwindled to 32%, affecting their revenue generation capacity.
- **Taxation Issues:**
  - The expansion of the non-divisible pool of taxes through cesses and surcharges has limited States' access to tax revenues, further diminishing their financial autonomy.
- **GST Specific Issues:**
  - The Central Government's repeated violations of compensation guarantees to States under the GST regime have exacerbated the financial strain on States during the pandemic. The delay in extending the GST compensation period has added to their woes.
- **Inadequate Funding:**
  - Cash-strapped States have been struggling to find alternative sources of funding to sustain their programs. The suspension and transfer of MPLAD funds to the Consolidated Fund of India further exacerbated their financial challenges.
- **Restrictions on Borrowing:**
  - Despite raising the borrowing limit under FRBM, the Central Government has imposed restrictive conditions, making it more difficult for States to borrow funds.
  - Positive Changes in Fiscal Federalism
  - Despite the challenges, there have been some positive developments in fiscal federalism:
- **Replacement of Planning Commission by NITI Aayog:**
  - The establishment of NITI Aayog has fostered a more cooperative approach to planning, involving both the Central Government and States.
- **Removal of Plan-Non Plan Expenditure Distinction:**
  - The elimination of the distinction between plan and non-plan expenditure has provided States with greater flexibility in utilising funds.
- **Introduction of GST:**
  - The implementation of GST has simplified the taxation system and eliminated cascading taxes, potentially benefiting both the Central Government and States.
- **Increased Devolution of Taxes:**
  - The 14th and 15th Finance Commissions have increased the devolution of taxes from 32% to 42% and 41%, respectively, providing States with a larger share of tax revenues.
- **Outcome Based Budgeting:**
  - The introduction of outcome-based budgeting has linked resource allocation to specific outcomes, enhancing the accountability and effectiveness of public spending.
- **Access to Official Development Assistance (ODA):**
  - State entities have been allowed to borrow directly from ODA partners since 2017, expanding their access to external financing.
- **Role of State Governments in External Relations:**
  - State governments have become more active in international relations, signing sister city agreements with cities in developed countries that promote cultural exchange and economic opportunities.

Inter-State Water Disputes

Constitutional Provisions

- **Entry 17** of the State List grants States the authority to legislate on matters related to water, including water supply, irrigation, canals, drainage, embankments, water storage, and hydroelectricity.
- **Entry 56** of the Union List empowers the Central government to regulate and develop inter-State rivers and river valleys, as deemed necessary by Parliament in the public interest.
- **Article 262(1):** Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of any inter-state river or river valley.
- **Article 262(2):** Notwithstanding anything in this Constitution, Parliament may, by law, provide that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint as is referred to in clause (1).

Laws passed by the Parliament

- **River Board Act, 1956: Establishment of River Boards for Intergovernmental Consultation**
  - Although enacted in 1956, the Rivers Act has not led to the formation of any river basins under its provisions. Nevertheless, the Centre maintains the authority to establish River Boards through official notification, either in response to a State government's request or independently. These River Boards function as advisory bodies to the governments, offering expert guidance on matters concerning river management and development.
  - Each River Board consists of a Chairman and other members appointed by the Central government,

ensuring a diverse range of expertise and perspectives in the decision-making process. The Boards play a crucial role in promoting intergovernmental cooperation, facilitating the integrated management of river basins, and encouraging sustainable water resource utilization. They address common challenges faced by States sharing a river system, contributing to effective and collaborative governance in river-related matters.

- **Inter State Water Dispute Act, 1956**
  - The Inter-State River Water Disputes Act of 1956 establishes a tribunal to adjudicate disputes or complaints relating to the use, distribution, or control of inter-state river waters. The tribunal consists of a Chairman and two other members nominated by the Chief Justice of India from among sitting judges of the Supreme Court or High Courts.
  - Clause (2) of the Act empowers Parliament to enact legislation that excludes the jurisdiction of the Supreme Court and other courts in matters related to inter-state river water disputes, vesting the tribunal with exclusive authority to resolve such issues. This provision ensures specialised and focused adjudication of these complex and sensitive matters.

Inter-State Water Disputes in India: A Complex Web of Factors

India's water resources are intricately linked to its political landscape, giving rise to numerous inter-State water disputes.

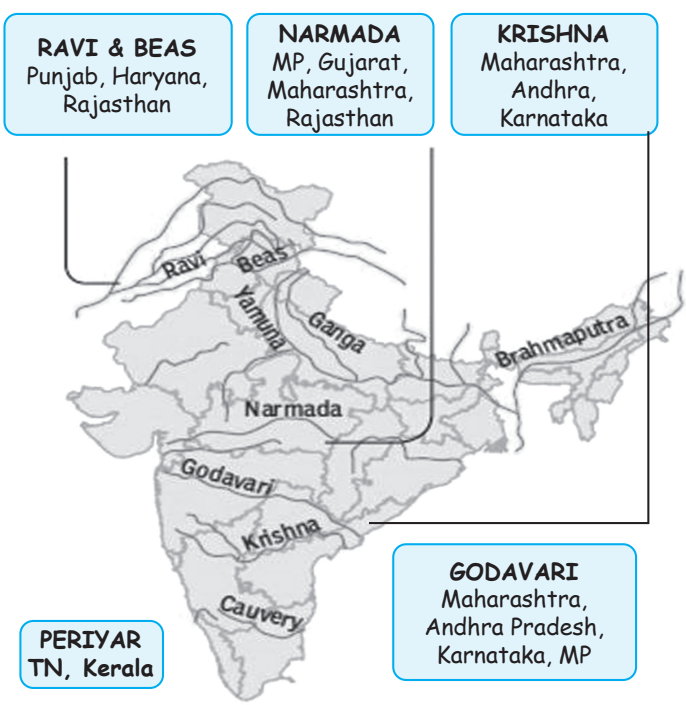


Fig. 13.8: Inter-State Water Disputes in India

These disputes stem from a complex interplay of factors, including:

- **Inter-State River Network:** Over 80% of India's rivers flow across multiple States, creating a complex interconnected system that forms the basis for numerous water resource conflicts.
- **Outdated Agreements:** Many existing inter-State water agreements, dating back over a century, were formulated without considering the evolving socio-economic, political, and geographical dynamics, leading to disputes over water allocation and sharing.
- **Politicisation of Water:** Water has become increasingly entangled in the political arena, transforming water disputes into battlegrounds for vote-bank politics. This politicisation has exacerbated conflicts, leading to State defiance, protracted litigation, and the subversion of resolution mechanisms.
- **Unidimensional Tribunal Composition:** The tribunals tasked with resolving inter-State water disputes often lack multidisciplinary representation, relying solely on legal expertise. This narrow composition overlooks the technical, environmental, and social dimensions of water management.
- **Inadequate Water Data:** The absence of authoritative water data that is mutually acceptable to all parties hinders the process of dispute resolution, making it difficult to establish a baseline for adjudication.
- **Prolonged Legal Battles:** Inter-State water disputes often entangle parties in protracted legal proceedings, characterised by extreme delays and a lack of timely resolutions. The Godavari water dispute, for instance, took over 17 years to reach a conclusion, while the Cauvery water dispute spanned over two decades.
- **Opaque Institutional Framework:** The institutional framework governing inter-state water disputes lacks transparency, with unclear guidelines and inadequate mechanisms for ensuring compliance with tribunal awards.

These factors have collectively contributed to the persistent water disputes that plague India's inter-State river management, hindering sustainable water resource utilisation and exacerbating conflicts between States. Addressing these underlying issues is crucial for achieving effective and equitable water governance across the country.

Related Cases

- **The Cauvery Water Dispute: A Saga of Non-Compliance and Conflict**
  - The Cauvery River water dispute has been a longstanding issue between the Indian States of Tamil Nadu and Karnataka. In 1970, the Tamil Nadu government requested the Central government's

intervention, leading to the establishment of the Cauvery Water Disputes Tribunal in 1990 following Supreme Court directives.

- In 1991, the tribunal issued an interim order instructing Karnataka to release water to Tamil Nadu. Despite this, Karnataka refused to comply, escalating tensions between the two States. After 16 years of hearings, the tribunal delivered its final verdict in 2007, allocating 419 tmcft of water to Tamil Nadu and 270 tmcft to Karnataka.
- However, Karnataka persisted in resisting water release, resulting in the Supreme Court charging the State with contempt of court in 2013. In 2016, Tamil Nadu petitioned the Supreme Court to enforce the tribunal's guidelines and ensure water release from Karnataka. This order led to protests in Karnataka, with concerns raised about their own water scarcity.

❑ **The Sutlej-Yamuna Link Canal**

The Sutlej-Yamuna Link (SYL) canal project, aimed at diverting water from the Sutlej River to Haryana, has been embroiled in a long and contentious dispute between the States of Punjab and Haryana.

- Following the bifurcation of Haryana from Punjab in 1966, Punjab initially resisted sharing water with Haryana, citing the **riparian principle**, which asserts that the water of a river belongs to the States or countries through which it flows. However, in 1981, the two States reached a mutual agreement on water reallocation, and construction of the SYL canal began in 1982.
- However, the project faced strong opposition in Punjab, leading to agitations and the eventual halt of construction work. In response, Haryana moved the Supreme Court to compel Punjab to complete the canal.
- In a significant turn of events, the Punjab Assembly passed the Punjab Termination of Agreements Act in 2004, effectively terminating its water-sharing agreements with Haryana and jeopardising the SYL project. This action prompted the Supreme Court to declare the act constitutionally invalid, ruling that Punjab had reneged on its commitment to share water resources.
- In 2020, the Supreme Court directed the Chief Ministers of Punjab and Haryana to engage in negotiations at the highest political level, mediated by the Central government, to resolve the SYL canal issue once and for all. The outcome of these negotiations remains to be seen, but the SYL canal dispute continues to cast a shadow over inter-State water management in India.

❑ **The Krishna Water Dispute**

- The Krishna Water Dispute, a long-standing issue over the allocation of Krishna River water among the States of Andhra Pradesh, Telangana, Karnataka, and Maharashtra, took a new turn following the bifurcation of Andhra Pradesh in 2014.
- Andhra Pradesh, now a smaller State, sought to include Telangana as a separate party in the Krishna Water Disputes Tribunal (KWDT) and to revise the water allocation among the four States instead of the existing three-State arrangement. This request was based on Section 89 of The Andhra Pradesh State Reorganisation Act, 2014.
- However, Karnataka and Maharashtra, the other riparian States, opposed this proposal, arguing that Telangana's share should be carved out of Andhra Pradesh's existing allocation, as Telangana was part of Andhra Pradesh when the initial allocation was determined by the KWDT.
- This dispute highlights the complexities of inter-State water resource management and the challenges of adjusting water allocations when State boundaries change. Finding a solution that is fair to all parties and ensures sustainable water management for the Krishna River basin remains a critical task for the Indian government.

Steps Taken to address the Issue

In 2019, the Inter-State River Water Disputes (Amendment) Bill was introduced in the Lok Sabha. This bill aimed to amend the existing Inter-State River Water Disputes Act, 1956, with a view to streamlining the adjudication of inter-state river water disputes and making the institutional architecture more robust.

❑ **Dispute Resolution Committee (DRC):**

- Under the Inter-State River Water Disputes (Amendment) Bill, 2019, the Central government will establish a Disputes Resolution Committee (DRC) whenever a State raises a dispute concerning inter-State river waters. The DRC will be tasked with resolving the dispute amicably through negotiations.
- The DRC will comprise a chairperson, nominated by the Central government, and experts with at least 15 years of experience in relevant sectors, also nominated by the Central government. Additionally, each State involved in the dispute will nominate one member from among its Joint Secretaries to serve on the DRC.
- The DRC will strive to resolve the dispute through negotiations within a period of one year, with an

extension of six months permissible under exceptional circumstances. Upon reaching a resolution, the DRC will submit a report outlining the details of the settlement to the Central government.

- If the DRC fails to resolve the dispute, the Central government will refer the matter to the Inter-State River Water Disputes Tribunal for adjudication. This referral must be made within three months of receiving the DRC's report.

❑ **Inter-State River Water Disputes Tribunal:**

- The Inter-State River Water Disputes (Amendment) Bill, 2019, proposes the establishment of a single Inter-State River Water Disputes Tribunal, empowered to adjudicate inter-state river water disputes. This Tribunal will have the flexibility to operate through multiple benches to efficiently handle the volume of pending cases.
- The creation of a unified Tribunal marks a departure from the current system of multiple Tribunals, each dedicated to specific inter-state river disputes. This consolidation aims to streamline adjudication processes, ensure consistency in legal principles, and expedite the resolution of water disputes.

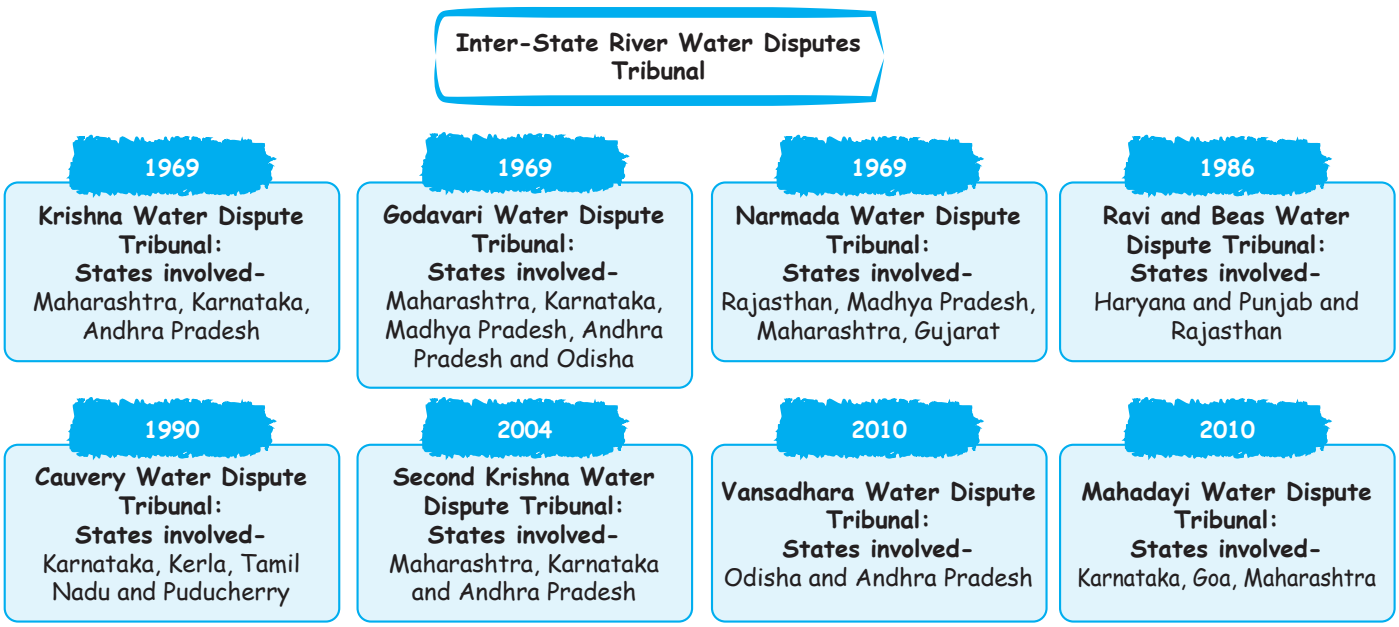


Fig. 13.9: Inter-State River Water Disputes Tribunal

❑ **Time Period:**

- The Inter-State River Water Disputes Act, 1956, mandates the Tribunal to deliver its decision within **three years, with an extension of two years** possible under certain circumstances.
- The Inter-State River Water Disputes (Amendment) Bill, 2019, proposes to shorten the initial time frame to **two years, with an additional one-year** extension permissible.
- Regarding matters referred back to the Tribunal for further consideration, the existing act stipulates a one-year timeframe for submitting a report, with the option of an extension granted by the Central government. The amendment bill limits this extension to a maximum of six months.

❑ **Decision of the Tribunal:**

- Under the Inter-State River Water Disputes Act, 1956, the Tribunal's decision must be published in the official gazette by the Central government. This decision carries the same weight as an order of the Supreme Court.
- The Inter-State River Water Disputes (Amendment) Bill, 2019, removes the requirement for such publication. Instead, it stipulates that the decision of the Tribunal Bench will be final and binding on the parties involved in the dispute.
- The original act allowed the Central government to make a scheme to implement the Tribunal's decision. The amendment bill mandates the Central government to make such a scheme. This shift from optional to mandatory reflects the government's commitment to ensuring that Tribunal decisions are effectively implemented.

❑ **Data Bank:**

- Under the Inter-State River Water Disputes Act, 1956, the Central government is responsible for maintaining a data bank and information system at the national level for each river basin.

- The Inter-State River Water Disputes (Amendment) Bill, 2019, introduces an important modification by granting the Central government the authority to appoint or authorise an agency to manage this data bank. This provision allows the Central government to delegate the task of data management to a specialised agency, potentially enhancing the efficiency and effectiveness of data collection, storage, and dissemination.

❑ **The River Basin Management Bill:**

- The River Basin Management Bill aims to optimise the development and management of inter-State rivers by promoting inter-State cooperation and adopting a basin-level approach to land and water resource planning.
- This holistic approach encompasses all forms of water, including soil moisture, groundwater, and surface water, ensuring the comprehensive and balanced development of both catchment and command areas.
- The draft bill proposes the establishment of 13 River Basin Authorities for various river basins across the country.

Mihir Shah Panel Recommendations:

The Mihir Shah Panel, constituted to assess the State of water management in India, has proposed a series of far-reaching recommendations aimed at strengthening the institutional framework and promoting sustainable water resource utilisation.

❑ **Restructuring of Central Water Institutions**

- The panel advocates for restructuring the Central Water Commission (CWC) and the Central Ground Water Board (CGWB) to enhance their efficiency and effectiveness. It also recommends establishing a National Water Commission as the apex body responsible for water policy, data management, and governance for water management across the country.

❑ **Regulating Industrial Water Usage**

- The panel proposes to bring industrial water under the purview of the National Water Commission. This move aims to ensure that industrial water use is regulated and accounted for within the overall water management framework.

❑ **Water as a Common Property Resource**

- The panel emphasises that water is a common property resource, not owned by individual landowners. This recognition underscores the need for collective responsibility in managing and protecting water resources.

IGNITE YOUR MIND

Imagine your school is like a big country, and there is a Head teacher (like the central government) and class teachers (like state governments). How do you think the main teacher and class teachers should work together to make sure everything in the school runs smoothly? What can they do to help each other and the students?

❑ **River Basin Planning**

- The panel advocates for adopting a river basin approach to water management, recognizing the interconnectedness between aquifers, groundwater, and river flows. This approach promotes integrated planning and resource allocation at the basin level.

❑ **Participatory Water Management**

- This approach involves involving communities and stakeholders in decision-making processes, fostering a sense of ownership and shared responsibility for water management.

❑ **National Commission to Review the Working of the Constitution (NCRWC) Recommendations**

- The NCRWC has also recommended enacting comprehensive Central legislation to define the constitution and jurisdiction of river boards, empowering them to regulate, develop, and control all inter-state rivers. This recommendation highlights the need for a clear legal framework to govern inter-State water management.

Inter-State Council (Article 263)

Article 263 of the Indian Constitution empowers the establishment of an **Inter-State Council** to address inter-State issues and promote harmonious relations between the States and the Union. This council serves as a crucial platform for dialogue, collaboration, and conflict resolution among the diverse States of India.

The ISC's mandate encompasses three primary functions:

❑ **Dispute Resolution:**

- The council plays a mediating role in resolving disputes that arise between States. It investigates the issues, facilitates discussions, and provides recommendations for amicable settlements.

❑ **Collaborative Policymaking:**

- This collaborative approach fosters coordinated policy decisions and ensures that the regional perspectives are considered at the national level.

- **Policy Coordination and Recommendations:**
  - The ISC makes recommendations on various subjects and issues, aiming to enhance policy coordination and streamline actions between the States and the Union.

Composition of the Inter-State Council

- **Chairman:** The Prime Minister of India
- **Members:**
  - Chief Ministers of all States
  - Chief Ministers of Union Territories with Legislative Assemblies
  - Administrators of Union Territories without Legislative Assemblies
  - Six Cabinet Ministers **nominated by** the Prime Minister of India including the Home Minister.

Procedure of the Inter-State Council

The Inter-State Council (ISC) follows a structured procedure to ensure efficient and effective discussions and decision-making. The Presidential Order outlining the ISC's guidelines stipulates the following procedures:

- **Issue Identification and Guidelines:**
  - The ISC establishes guidelines for identifying and selecting issues to be brought before it. This ensures that the council focuses on matters of significant importance and relevance.
- **Meeting Frequency:**
  - The ISC convenes **at least three times annually** at convenient times and locations determined by the Chairman. This regular schedule facilitates ongoing dialogue and collaboration among the council members.
- **In Camera Meetings:**
  - To foster open and candid discussions, ISC meetings are held in camera, meaning they are closed to the public. This confidentiality encourages members to express their views freely and without external pressure.
- **Quorum:**
  - A quorum for an ISC meeting is constituted by the presence of the Chairman and a majority of the members. This ensures that a sufficient number of members are present to make informed decisions.
- **Consensus-Based Decision-Making:**
  - All decisions at ISC meetings are reached through consensus. This approach promotes unity and ensures that all members are in agreement with the council's decisions.

The Inter-State Council's Mandate under Article 263

The Inter-State Council (ISC), established under Article 263 of the Indian Constitution, plays a pivotal role in fostering harmonious inter-State relations. Its mandate encompasses three key responsibilities:

- **Dispute Resolution:**
  - The ISC acts as a mediator in resolving disputes between States. It investigates the issues, facilitates discussions, and provides recommendations for amicable settlements.
- **Collaborative Policymaking:**
  - The ISC serves as a platform for discussing and investigating subjects of common interest to multiple States or the Union and one or more States. This collaborative approach ensures that regional perspectives are considered at the national level and leads to coordinated policy decisions.
- **Policy Coordination and Recommendations:**
  - The ISC makes recommendations on various subjects and issues, aiming to enhance policy coordination and streamline actions between the States and the Union. These recommendations promote consistent and effective implementation of policies across the country.

Zonal Council

The concept of Zonal Councils was introduced by India's first Prime Minister, Pandit Jawaharlal Nehru, in 1956. These councils were established as statutory bodies under the **States Reorganisation Act of 1956** to promote cooperation and coordination among States within their respective zones.

Structure

The five Zonal Councils in India are constituted as follows:

- **Northern Zonal Council:**
  - **States**: Haryana, Himachal Pradesh, Punjab, Rajasthan
  - **Union Territories**: National Capital Territory of Delhi, Chandigarh, Jammu and Kashmir, Ladakh
- **Central Zonal Council:**
  - **States**: Chhattisgarh, Uttarakhand, Uttar Pradesh, Madhya Pradesh
- **Eastern Zonal Council:**
  - **States**: Bihar, Jharkhand, Odisha, West Bengal, Sikkim
- **Western Zonal Council:**
  - **States**: Goa, Gujarat, Maharashtra
  - **Union Territories**: Daman and Diu, Dadra and Nagar Haveli
- **Southern Zonal Council:**
  - **States**: Andhra Pradesh, Karnataka, Kerala, Tamil Nadu
  - **Union Territory**: Puducherry

Composition

- **Chairman:** Each Zonal Council is chaired by the **Union Home Minister**.
- **Vice-Chairman:** The **Chief Ministers of the States** within each zone rotate annually as Vice-Chairman.
- **Members:**
  - Chief Minister and two other Ministers from each State within the zone
  - Two members from Union Territories included in the zone
- **Advisers:**
  - One person nominated by the Planning Commission for each Zonal Council
  - Chief Secretaries of each State within the zone
  - One officer/Development Commissioner nominated by each State within the zone

Objectives

The primary objectives of Zonal Councils are:

- **National Integration:** Promote unity and cohesion among India's diverse States.
- **Regional Cooperation:** Foster collaboration and coordination among States within their respective zones.
- **Effective Governance:** Facilitate smooth cooperation between the Central government and the States.
- **Development Initiatives:** Promote balanced and sustainable development across the regions.

Functions

Zonal Councils serve as advisory bodies with the authority to discuss and make recommendations on various issues, including:

- **Economic and Social Planning:** Address regional economic and social development concerns.
- **Border Disputes and Inter-State Relations:** Resolve inter-State disputes and promote harmonious relations.
- **Linguistic Minorities:** Protect and promote the rights of linguistic minorities.
- **Infrastructure Development:** Facilitate regional infrastructure development projects.
- **Resource Management:** Coordinate the management of shared resources, such as water, forests, and minerals.

North Eastern Council

In 1971, the North Eastern Council (NEC) was established by the Indian Parliament **(The North Eastern Council Act, 1971)** as the leading agency for the social and economic development of India's northeastern region, encompassing the eight States of Assam, Arunachal Pradesh, Meghalaya, Manipur, Mizoram, Sikkim, Nagaland, and Tripura. The inception of the NEC marked a pivotal moment, ushering in an era of focused and coordinated efforts to accelerate the region's development.

Composition

The North Eastern Council (NEC) is composed of the following members:

- **Ex-Officio Chairman**: Union Home Minister
- **Ex-Officio Vice-Chairman**: Minister of State (Independent Charge) of the Development of North Eastern Region (DoNER)
- **Permanent Members:**
  - Governors of the eight North Eastern States
  - Chief Ministers of the eight North Eastern States
- **Nominated Members:**
  - Three members nominated by the President of India

Objectives

The North Eastern Council (NEC) is guided by a set of comprehensive objectives that aim to transform the North Eastern Region (NER):

- **Balanced and Sustainable Development:**
  - To promote balanced, integrated, and sustainable development across the NER, ensuring equitable growth and environmental stewardship.
- **Infrastructure Development:**
  - To formulate and coordinate a comprehensive plan to address the NER's infrastructure needs, encompassing transportation, communication, energy, and other essential services.
- **Social and Economic Empowerment:**
  - To provide ample opportunities for social and economic development, enabling the people of the NER to enhance their livelihoods and well-being.
- **Infrastructure Investment:**
  - To aggressively promote infrastructure development and other development activities, stimulating economic growth and improving living standards across the NER.
- **Institutions of National Importance:**
  - To support the establishment of an Institute of National Importance in the NER, fostering academic excellence and contributing to the region's intellectual capital.
- **Regional Integration:**
  - To foster seamless integration of the NER with mainland India, strengthening connectivity, cultural exchange, and economic linkages.
- **Functions**

Its primary functions encompass:

- **Regional Dialogue and Planning:**
  - Facilitating discussions among its members, formulating comprehensive regional development plans, and providing expert advice to the Central and State governments on developmental issues.

- **Infrastructure and Resource Management:**
  - Prioritising critical areas such as social and economic planning, interstate transport, communication, flood control, and common power projects to address the region's infrastructure and resource needs.
- **Unified Regional Plans:**
  - Developing unified regional plans that encompass matters of common importance, including project priorities and locations, to ensure coordinated and strategic development.
- **Project Monitoring and Coordination:**
  - Reviewing and inspecting schemes and projects under these plans to enforce coordination among concerned State governments and ensure timely implementation.
- **Financial Assistance Advocacy:**
  - Recommending the financial assistance required for regional plan projects to the Central government, which then allocates the necessary funds.
- **Project Feasibility Assessment:**
  - Suggesting the conduct of surveys and feasibility studies to incorporate new projects into regional plans, ensuring their viability and effectiveness.
- **Public Order and Security Evaluation:**
  - Evaluating State measures for maintaining public order and security, offering necessary recommendations to promote peace and stability in the region.

Role of Zonal Councils in Strengthening Cooperative Federalism in India:

- Overall, 19 Zonal council meetings and 25 standing committee meetings have taken place in the past eight years.
- North Eastern Council has provided various solutions and roadmaps for a unified and coordinated Regional Plan.
- The recent signing of a joint statement by the Assam and Mizoram governments on resolving their border dispute can be attributed to the efforts of North Eastern council.
- Zonal council apart from resolving the issues, also gives push to infrastructure projects requiring inter-State coordination.
- The participating States have also been utilizing the Zonal Council to induce greater financial involvement of the Central Government in certain spheres.
- When Left Wing Extremist (LWE) violence was at its peak in 2009, the number of incidents of Left Wing Extremism was 2,258, that decreased to 509 in 2021 due to security forces strengthening and infrastructure development in LWE-affected areas. The government has opened about 5,000 post offices and more than 1,200 bank branches in the last three years in Left-Wing Extremism-affected areas.
- Zonal council provides a decentralized way of discussing issues with States. This is in consonance with the spirit of considering States equal partners in India's progress.

NER Vision 2020

The NER Vision 2020 document outlines a comprehensive plan for the rapid and sustainable development of India's North Eastern Region (NER). This visionary document aims to transform the NER into a vibrant and prosperous region, bridging the gap with other parts of the country.

Key Initiatives

To achieve its ambitious goals, the NER Vision 2020 document encompasses a range of initiatives:

- **Sector-Specific Action Plans:**
  - Seventeen thematic groups, composed of sector experts, were formed to develop detailed action plans for various sectors, including infrastructure, agriculture, healthcare, and education.
- **Infrastructure Development:**
  - Priority is placed on enhancing infrastructure across the region, with a focus on roads, railways, airways, and power.
- **Economic Growth:**
  - Strategies to promote economic growth and sustainable development are outlined, emphasising job creation, entrepreneurship, and tourism.
- **Social Development:**
  - Initiatives to improve social welfare, including healthcare, education, and skill development, are emphasised.

Progress and Evaluation

The implementation of the NER Vision 2020 document has resulted in significant progress:

- **Improved Telecom Connectivity:**
  - Telecom connectivity across the NER has witnessed considerable improvement.
- **Infrastructure Enhancement:**
  - Major infrastructure projects in the roads, railways, airways, and power sectors have been implemented.
- **Economic Growth:**
  - The average GDP growth of NER States reached 9.8% during the 12th Five-Year Plan (2012-17).

- **Ongoing Evaluation:**
  - The Vision 2020 document is undergoing academic evaluation to identify areas for improvement and ensure effective implementation.

Inter-State Trade and Commerce

The seamless exchange of goods and services across different regions of a nation is not merely a commercial activity, it is the lifeblood of economic growth and prosperity. It plays a pivotal role in driving economic unity, fostering national integration, and promoting the overall well-being of the population.

The cornerstone of inter-State trade and commerce in India is enshrined in **Articles 301 to 307** of the Constitution. These articles uphold the principle of unrestricted trade, business, and intercourse across the country, subject only to reasonable limitations imposed for the public interest. While Article 301 guarantees this freedom, subsequent articles within **Part XIII** meticulously outline the limitations that ensure equitable and just trade practices.

Limitations on Inter-State Trade and Commerce in India

The freedom of inter-State trade and commerce, enshrined in Article 301 of the Indian Constitution, is not absolute. To maintain a balance between trade freedom and public interest, the Constitution imposes various limitations on this freedom:

- **Parliament's Authority to impose Restrictions (Article 302)**
  - Parliament can impose non-discriminatory restrictions on trade and commerce in the public interest, such as regulating essential commodities to prevent scarcity and ensure equitable distribution.
- **Non-Discrimination between States (Article 303(1))**
  - Neither Parliament nor State legislatures can enact laws that grant preferential treatment to one State over another or discriminate between States in matters of trade and commerce.
- **Parliament's Power during Scarcity (Article 303(2))**
  - In times of scarcity, Parliament can enact discriminatory laws to ensure fair distribution of goods across India.
- **State Taxation on Imported Goods (Article 304)**
  - State legislatures can impose non-discriminatory taxes on goods imported from other States, provided they are similar to taxes imposed on intra-State goods. Reasonable restrictions can also be placed on intra-state trade in the public interest, subject to the President's prior sanction.
- **State Trading (Article 19(6)(4))**
  - The appropriate legislature can enact laws enabling the State or State-owned corporations to engage in trade, business, or industry for the public benefit.
- **Enforcement Authority (Article 307)**
  - Parliament can appoint authorities to enforce the provisions of **Articles 301 to 304** and confer necessary powers and duties.

IGNITE YOUR MIND

Imagine a big playground with different teams playing different games. How can they all play together and have fun without any fights? How is this similar to the different states in our country work together to keep the spirit of Federalism alive?

Constitutional Provisions for Inter-State Trade and Commerce

- **The Foundation of Trade Freedom: Article 19(1)(g) and Article 301**
  - The right to engage in trade and business is enshrined in Article 19(1)(g) of the Constitution, guaranteeing Indian citizens the freedom to pursue their economic aspirations. This fundamental right is further reinforced by Article 301, which declares that trade, commerce, and intercourse shall flow freely throughout the territory of India.
- **The Purpose of Part XIII: Fostering Economic Unity**
  - The overarching objective of Part XIII is to dismantle barriers between States, promoting the seamless movement of goods, services, and individuals across India. This goal extends not only to inter-State activities but also to intra-State transactions, ensuring a unified economic space within the country.

Challenges in Inter-State Trade and Commerce

Despite the constitutional framework designed to promote inter-State trade and commerce, persistent challenges hinder the seamless flow of goods, services, and individuals across India. These challenges demand careful attention and innovative solutions to ensure a more efficient and unified economic space within the country.

- **Navigating Scarcity (Article 303(2))**
  - Effectively managing scarcity situations and ensuring equitable distribution of goods under Article 303(2) requires a delicate balance between the need for intervention and the preservation of trade freedom.
- **Simplifying the Regulatory Framework**
  - The complex interplay of numerous laws, regulations, and executive orders governing inter-State trade and commerce creates an intricate and often

confusing regulatory environment. Streamlining and harmonising these provisions is essential to reducing compliance costs, enhancing transparency, and promoting predictability for businesses and individuals engaged in inter-State activities.

- **Mitigating the Impact of Legislative Actions**
  - Legislative and executive actions, such as the imposition of tariffs, taxation policies, and procurement regulations, can have significant and sometimes unintended consequences for inter-State trade and commerce. Robust regulatory mechanisms and stakeholder engagement are crucial to assess the potential impacts of such actions and ensure that they do not unduly burden businesses or hinder the free flow of goods and services.

COMMISSIONS AND COMMITTEES

Administrative Reforms Commission

The **Administrative Reforms Commission (ARC) was established by the Government of India in 1966** to review the public administration system of India and recommend reforms. The ARC submitted its report on Centre-State Relations in 1969. The report made several recommendations aimed at improving the relationship between the Central Government and the States.

Key recommendations of the ARC on Centre-State Relations

- **Establishment of an Inter-State Council:**
  - The ARC recommended the establishment of an Inter-State Council to provide a platform for consultation and coordination between the Centre and the States.
- **Delegation of Powers to States:**
  - The ARC recommended that the Central Government should delegate more powers to the States to enable them to function more effectively.
- **Augmenting Financial Resources of States:**
  - The ARC recommended that the financial resources of the States should be augmented through increased devolution of tax revenues and grants-in-aid.
- **Review of Central Control over States:**
  - The ARC recommended that the Central Government should review its control over the States to ensure that it is not excessive and does not hinder the States' autonomy.
- **Strengthening of Local Governments:**
  - The ARC recommended that local governments should be strengthened to enable them to play a more effective role in the development process.

The ARC's recommendations on Centre-State Relations have been influential in shaping the relationship between the Centre and the States in India. Many of the recommendations have been implemented, and they have contributed to a more cooperative and harmonious relationship between the two levels of government.

Impact of the ARC's recommendations

The ARC's recommendations have had a significant impact on Centre-State Relations in India. Some of the key impacts include:

- **Establishment of Inter-State Council:**
  - The Inter-State Council was established in 1990 and has provided a valuable forum for consultation and coordination between the Centre and the States.
- **Increased Devolution of Taxes:**
  - The devolution of tax revenues to the States has increased significantly since the ARC report. This has provided States with greater financial resources to meet their development needs.
- **Greater Flexibility for States:**
  - The Centre has adopted a more flexible approach to its dealings with the States, allowing them greater autonomy in formulating and implementing their policies.
- **Empowerment of Local Governments:**
  - The ARC's recommendations on strengthening local governments have led to a greater emphasis on decentralisation and devolution of power to local bodies.
- **Improved Coordination and Cooperation:**
  - The relationship between the Centre and the States has become more cooperative and harmonious, leading to better coordination and cooperation on issues of mutual interest.

Rajamannar Committee

The **Rajamannar Committee,** officially known as the **Centre-State Relations Inquiry Committee,** was a three-member committee established by the Government of Tamil Nadu in **1969** to examine the relationship between the Central Government and the States in India. The committee was **chaired by Dr. P. V. Rajamannar,** a former Chief Justice of the Madras High Court.

The committee's report, submitted in 1971, made several recommendations aimed at enhancing the autonomy and powers of the States.

These recommendations included:

- **Establishment of an Inter-State Council:**
  - The committee recommended the establishment of an Inter-State Council to provide a platform for consultation and coordination between the Centre and the States.
- **Delegation of Powers to States:**
  - The committee recommended that the Central Government should delegate more powers to the

States, particularly in areas such as education, health, and social welfare.
- The residuary powers should be allocated to the states

❑ **Augmenting Financial Resources of States:**
- The committee recommended that the financial resources of the States should be augmented through increased devolution of tax revenues and grants-in-aid.
- It also recommended that the Finance Commission should be made a permanent body.

❑ **Review of Central Control over States:**
- The committee recommended that the Central Government should review its control over the States to ensure that it is not excessive and does not hinder the States' autonomy.
- Articles 356, 357, and 365 (dealing with President's Rule) should be totally omitted.
- The provision that the state ministry holds office during the pleasure of the governor should be omitted.

❑ **Abolition of All-India Services:**
- The committee recommended the abolition of All-India Services (IAS, IPS, and IFS) to reduce the Central Government's control over State administration.

❑ **Replacement of the Planning Commission:**
- The committee recommended the replacement of the Planning Commission with a statutory body to ensure greater involvement of the States in the planning process.

Sarkaria Commission

The **Sarkaria Commission was established by the Government of India in 1983** to examine and review the working of the existing arrangements between the Union and the States and suggest changes within the framework of the Constitution of India. The Commission submitted its final report in 1988. It contained 247 specific recommendations.

Key recommendations of the Sarkaria Commission on Inter-State Relations:

❑ **Governor's Role and Appointment:**
- Selection: Consult the Vice President and Lok Sabha Speaker while appointing Governors.
- Tenure: Fix a five-year term, ensuring they're not liable for transfer or removal during that period.
- Powers: Curtail discretionary powers under Article 356 (dismissing state governments) and make it a transparent, accountable process with checks and balances.
- Refrain from interfering: Governors should avoid unnecessary interference in state administration and function as impartial guides.

❑ **Legislative Relations:**
- Concurrent List: Clearly define the division of legislative powers between the centre and states in the Concurrent List (subjects with overlapping jurisdiction).
- Prior Consultation: Ensure prior consultation with states before introducing central legislation impacting state subjects.
- Financial Impact: Assess and compensate states for any financial burden arising from centrally imposed schemes.

❑ **Administrative Relations:**
- Central Intervention: Limit the centre's power to deploy paramilitary forces in states without their consent.
- Central Agencies: Clearly define the roles and responsibilities of central agencies operating in states to avoid overlap and friction.
- Inter-State Councils: Strengthen Inter-State Council and Zonal Councils as platforms for resolving disputes and fostering cooperation.

❑ **Financial Relations:**
- Finance Commission: Enhance the role of the Finance Commission in determining devolution of financial resources to states.
- Central Grants: Make central grants less discretionary and more formula-based, ensuring transparency and equity.
- Debt Management: Coordinate and streamline states' borrowing powers to avoid unsustainable debt burdens.

❑ **Additional Recommendations:**
- All India Services: Review the recruitment and allocation of All India Service officers to ensure states have a say in their deployment.
- Language Policy: Promote wider use of regional languages in official communication and court proceedings.
- Constitutional Amendments: Create a mechanism for easier amendments to the Constitution, particularly concerning Centre-State relations.

❑ **Strengthening of Inter-State Council:**
- The Commission recommended that the Inter-State Council should be strengthened to provide a more effective platform for consultation and coordination between the Centre and the States.

❑ **Addressing Inter-State Disputes:**
- The National Development Council should be reconstituted and renamed as the National Economic and Development Council. It should act as a forum for consultation and coordination between the centre and the states on economic and development matters.

- **Protecting States' Rights:**
  - The Commission recommended that the Central Government should respect the rights of the States as enshrined in the Constitution.

The Sarkaria Commission's recommendations on Inter-State Relations have been influential in shaping the relationship between the Centre and the States in India. Many of the recommendations have been implemented, and they have contributed to a more cooperative and harmonious relationship between the two levels of government.

Impact of the Sarkaria Commission's Recommendations

The Sarkaria Commission's recommendations have had a significant impact on Inter-State Relations in India. Some of the key impacts include:

- **Strengthened Inter-State Council:**
  - The Inter-State Council has been strengthened and has played a more active role in facilitating dialogue and coordination between the Centre and the States.
- **Improved Role of Governors:**
  - The role of Governors has been redefined, and they have become more actively involved in the administration of their respective States.
- **Reduced Central Control:**
  - The Central Government has adopted a more flexible approach to its dealings with the States, allowing them greater autonomy in managing their affairs.
- **Efforts to Address Inter-State Disputes:**
  - There has been a greater focus on addressing inter-State disputes through dialogue and negotiation.
- **Greater Respect for States' Rights:**
  - The Central Government has shown greater respect for the rights of the States as enshrined in the Constitution.

Punchhi Commission

The Punchhi Commission, formed by the Union Government in April 2007 and chaired by former Chief Justice of India **Madan Mohan Punchhi,** conducted a comprehensive examination of the existing Union-State arrangements. This review encompassed legislative and administrative relations, court rulings on powers and responsibilities, the role of Governors, emergency provisions, and more. The Commission submitted its detailed seven-volume report to the government in March 2010.

Following this, the Inter-State Council's Standing Committee considered the Punchhi panel's suggestions during meetings in April 2017, November 2017, and May 2018.

Key Recommendations of the Punchhi Commission include

- **National Integration Council:**
  - Proposed the creation of a superior entity, the 'National Integration Council,' to address internal security matters, similar to the Homeland Security Department in the United States.
- **Amendment to Article 355 and Article 356:**
  - Recommended amendments to Article 355 and Article 356 of the Constitution, focusing on safeguarding States' interests and preventing the misuse of Central powers.
  - Article 355 pertains to the Centre's duty to protect States from external aggression, while Article 356 addresses the imposition of the President's rule in case of State machinery failure.
- **Subjects in the Concurrent List:**
  - Advocated for States to be consulted through the Inter-State Council before introducing bills related to matters in the concurrent list, promoting cooperative federalism.
  - The concurrent list includes subjects on which both State and Centre governments can legislate.
- **Appointment and Removal of Governors:**
  - Recommended that Governors abstain from active politics for at least two years before their appointment.
  - Emphasised the involvement of the State's Chief Minister in the Governor's appointment process.
  - Proposed the formation of a committee, including the Prime Minister, Home Minister, Lok Sabha Speaker, and the relevant Chief Minister, to handle Governor appointments.
  - Suggested a fixed five-year term for Governors and outlined a process for removal via a State Legislature resolution.
- **Union's Power of Making Treaties:**
  - Advocated for regulating the union's treaty-making power concerning matters in the State list, ensuring States have increased representation in their internal affairs.
- **Appointment of Chief Ministers:**
  - Called for clear guidelines to limit the Governor's discretionary powers in the appointment of chief ministers.
  - Considered a pre-poll alliance as a single political party.
  - Outlined a precedence order for forming the State government based on the largest pre-poll alliance, single largest party with support, post-poll alliances with a few parties joining the government, and post-poll alliances with outside support from independents.

ASYMMETRIC FEDERALISM

Asymmetric federalism is a system of government in which different States or regions have different powers or authorities. This means that not all States or regions are equal in terms of their autonomy or decision-making power. Asymmetric federalism is often used to accommodate the diverse needs and interests of different regions or groups within a country.

Significance of Asymmetric Federalism

A distinguishing feature of India's federal system is its inherent asymmetry. The Indian Constitution establishes a tiered federal structure, clearly delineating the subjects over which each tier of government exercises authority. This asymmetric approach is essential for India's governance due to several factors:

- **Embracing Diversity:**
  - India's rich tapestry of cultures, languages, and religions necessitates a flexible federal system that can accommodate regional and cultural variations. Asymmetric federalism provides the framework to address these diverse needs effectively.
- **Integration and Accommodation:**
  - Asymmetric federalism fosters a system that allows for self-governance within the broader framework of shared rule, adhering to the principle of weighted and differentiated equality. This approach ensures that all regions and groups have a voice and a stake in the governance process.
- **Protecting Minority Groups:**
  - By granting greater autonomy and power to regions with concentrated minority populations, asymmetric federalism helps safeguard the interests and rights of these marginalised groups.
- **Addressing State-Specific Concerns:**
  - Empowering States with greater decision-making authority allows them to tailor solutions to their unique challenges and priorities. This decentralised approach ensures that State-specific issues receive the attention and resources they deserve.
- **Strengthening Federalism:**
  - Asymmetric federalism promotes a balanced distribution of power between the Central and State governments. This decentralisation of decision-making strengthens the overall federal structure and enhances the effectiveness of governance.

ASYMMETRIC FEATURES OF INDIAN FEDERALISM

Constitutional Provisions

- **Vertical asymmetry:**
  - The Indian Constitution grants the Central government more power than the States. For instance, the Central government can unilaterally alter State names and boundaries (Article 3) and impose a national emergency (Article 352).
- **Horizontal asymmetry:**
  - States have unequal representation in the Rajya Sabha (upper house of Parliament), with Uttar Pradesh having 31 seats while Arunachal Pradesh has only 1. Additionally, Part VIII of the Constitution outlines special provisions for Union Territories, which are Centrally administered regions.

Fiscal Asymmetry

- **Finance Commission:**
  - The Finance Commission determines the share of States in Central taxes. For the 2021-26 period, States are to receive 41% of Central taxes.
- **Devolution among States:**
  - The distribution of funds among States considers factors like income disparity, demographic performance, and forest cover.
- **Grants:**
  - The Central government provides grants to States for various purposes, such as revenue deficits and specific sectors.
- **Centrally sponsored schemes:**
  - These schemes are jointly funded by the Central and State governments, with varying cost-sharing ratios. For special category States, the Central government's share is higher.

Inter-State Border Dispute

Inter-State border disputes have long been a contentious issue in India, posing a significant challenge to cooperative federalism. These disputes stem from a variety of factors, including historical discrepancies, conflicting interpretations of colonial-era boundary demarcations, and disagreements over resource-rich territories.

Understanding the Roots of Inter-State Conflicts

The origins of inter-state border disputes can be traced back to various factors, including:

- **Reorganisation Considerations**
  - The States Reorganisation Commission's recommendations for State separation based on language sowed the seeds for territorial readjustments that later evolved into disputes.

- **Linguistic Assertion**
  - The reorganisation of States along linguistic lines in the 1950s fueled territorial claims from linguistic groups seeking their own statehood or inclusion in existing States.
- **Colonial Division**
  - The demarcation of State boundaries often adhered to colonial-era district boundaries, leading to inconsistencies and disputes in the post-colonial era.
- **Inequitable Resource Sharing**
  - Territorial contests stem from unequal access to resources, particularly river waters, triggering disputes between States.
- **Lack of Constitutional Mechanism**
  - While Article 262 addresses inter-State water disputes, there is no similar provision for land disputes, creating a legal vacuum.
- **Political Opportunism**
  - The unresolved nature of disputes often serves as a political tool for parties to garner votes, hindering genuine efforts towards resolution.

Suggested Approaches for Dispute Resolution

To effectively address inter-State border disputes, a multi-pronged approach is needed:

- **Embracing Federalism**
  - The idea of an integrated India should supersede fragmented State interests, fostering a spirit of cooperation and understanding.
- **Geo-Cultural Approach**
  - Acknowledging the geo-cultural linkages of people in disputed areas can form the basis for unity and shared identity.
- **Rational Regional Separation**
  - Regional separation or division should prioritise local convenience, cultural linkages, and historical ties.

Parliament's Role in Boundary Alterations

The Parliament holds the ultimate authority to make decisions regarding alterations to State boundaries. However, this authority is not absolute and requires consultation with the concerned States, though their consent is not binding.

The Supreme Court plays a crucial role in adjudicating inter-State border disputes, providing a neutral forum for resolving these complex issues.

Key Inter-State Border Disputes in India

- **Karnataka-Maharashtra**
  - The Belgaum district, with its significant Marathi and Kannada-speaking populations, has been at the heart of a long-standing dispute between Karnataka and Maharashtra.
- **Assam-Mizoram**
  - The border dispute between Assam and Mizoram stems from discrepancies between two British-era notifications. Mizoram claims the 1875 boundary, while Assam asserts the 1933 boundary.
- **Haryana-Himachal Pradesh**
  - The Parwanoo region has been the focus of the dispute between Haryana and Himachal Pradesh, with Haryana claiming parts of Himachal's territory.
- **Himachal Pradesh-Ladakh**
  - Both Himachal Pradesh and Ladakh lay claim to Sarchu, a strategically located area on the Leh-Manali route.
- **Arunachal Pradesh-Assam**
  - Arunachal Pradesh disputes the transfer of forested tracts to Assam during the reorganisation of North Eastern States. The matter is pending before the Supreme Court.
- **Meghalaya-Assam**
  - Meghalaya challenged the Assam Reorganisation Act of 1971, claiming Blocks I and II of the Mikir Hills as part of its territory.
- **Assam-Nagaland**
  - The longest-running border dispute in the North East, this conflict began soon after Nagaland's formation in 1963 over the demarcation of Naga-dominated areas.

Should States have their Own Flags?

The Karnataka State government has recently established a committee to explore the possibility of adopting a distinct State flag. This committee, composed of bureaucrats and academics, is tasked with examining the legal aspects of this matter and proposing a design for the State flag.

- **Jammu and Kashmir's Unique Status**
  - Jammu and Kashmir was the only Indian State to currently possess an official State flag, a privilege granted under Article 370 of the Indian Constitution. This special status has allowed Jammu and Kashmir to fly its State flag alongside the national flag. However, since the abrogation of Article 370 in 2019, the State flag has been removed.
- **Constitutional and Legal Considerations**
  - While the Indian Constitution does not explicitly prohibit States from having their own flags, the Supreme Court has clarified that such flags must not be hoisted in a manner that disrespects the national flag. The Flag Code of India, 2002, also implicitly allows for State flags as long as they maintain a respectful distance from the national flag.
- **Arguments for and against State Flags**
  - Opponents of State flags argue that the national tricolour serves as a unifying symbol for India and that permitting individual State flags could diminish their significance. They also raise concerns that allowing one State to have its own flag might set a precedent, leading to similar demands from other States.

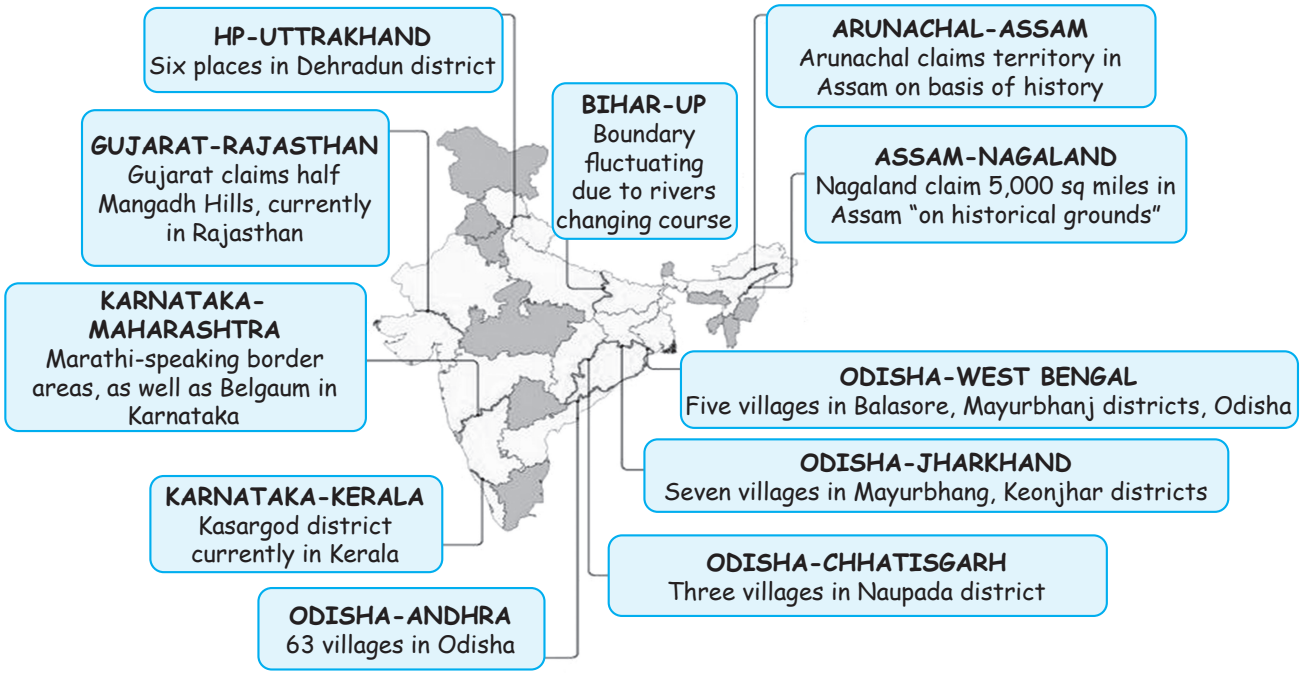

HP-UTTRAKHAND
Six places in Dehradun district
GUJARAT-RAJASTHAN
Gujarat claims half Mangadh Hills, currently in Rajasthan
KARNATAKA-MAHARASHTRA
Marathi-speaking border areas, as well as Belgaum in Karnataka
KARNATAKA-KERALA
Kasargod district currently in Kerala
ODISHA-ANDHRA
63 villages in Odisha
BIHAR-UP
Boundary fluctuating due to rivers changing course
ARUNACHAL-ASSAM
Arunachal claims territory in Assam on basis of history
ASSAM-NAGALAND
Nagaland claim 5,000 sq miles in Assam "on historical grounds"
ODISHA-WEST BENGAL
Five villages in Balasore, Mayurbhanj districts, Odisha
ODISHA-JHARKHAND
Seven villages in Mayurbhang, Keonjhar districts
ODISHA-CHHATISGARH
Three villages in Naupada district

Fig. 13.11: States have their own unique status

- Proponents of State flags point to examples like Germany and the United States, where State flags coexist with the national flag without undermining national unity. They argue that State flags can serve as a symbol of regional identity and pride without compromising the integrity of the nation.

❑ **Karnataka's Unofficial State Flag**

- Karnataka has had an unofficial state flag since the mid-1960s, known as the Kannada Paksha. This red and yellow flag was created by Kannada writer and activist Ma Ramamurthy for a pro-Kannada political party. While not officially sanctioned, the Kannada Paksha is flown annually on November 1st, Karnataka's foundation day, and is often seen in public settings.

❑ **Central Government's Position**

- The Indian Home Ministry has Stated that there is no legal provision either for providing or prohibiting a separate flag for any State. They have also clarified that if a State flag is created, it will only represent the people of the State and not the State itself.

❑ **Way Forward**

- The question of State flags in India remains complex and open to debate. While proponents argue for the recognition of regional identity, opponents emphasise the importance of a unified national symbol. The Karnataka government's committee is tasked with carefully considering the legal, social, and symbolic implications of adopting a State flag.

Demand for Statehood

Modern States are large and intricate, with various cultural and economic challenges, and their complexities are compounded by historical experiences. Since its independence, India has grappled with demands for separate Statehood, primarily rooted in language, culture, ethnicity, and religion. Later, the justifications for these demands shifted towards improved governance, greater participation, administrative convenience, and economic viability in addressing the developmental needs of sub-regions.

The early 21st century in India also witnessed the formation of three new States – Chhattisgarh, Uttarakhand, and Jharkhand – and more recently, Telangana achieved separate Statehood. As democracy deepens, so do these aspirations. Previously overlooked sections of the population are recognizing their own significance, demanding new provinces or States, seeking new borders, and striving for autonomy.

Various Statehood Demands in India

❑ **Bodoland**

- The Bodos, the largest ethnic and linguistic community in northern Assam, have long aspired for a separate Bodoland State. Their agitation for Statehood culminated in a 2003 agreement between the Government of India, the Assam State government, and the Bodo Liberation Tigers Force (BLTF). This agreement granted Bodos the Bodoland Territorial Council (BTC), an autonomous administrative body within the State of Assam under the Sixth Schedule of the Indian Constitution.

- **Saurashtra**
  - The movement for a separate Saurashtra State gained momentum in 1972 under the leadership of Ratilal Tanna. The region's lack of adequate water supply, limited employment opportunities, and consequent youth migration have been cited as primary drivers of this demand for Statehood. Saurashtra also possesses a distinct linguistic identity that sets it apart from the rest of Gujarat.
- **Gorkhaland**
  - Gorkhaland is a proposed State encompassing the Darjeeling hills and Dooars regions in northern West Bengal, inhabited predominantly by the ethnic Gorkha (Nepali) people. The Gorkha community has historically sought political autonomy and recognition of their distinct cultural and linguistic identity.

Factors Fueling Demands for Separate Statehood

- **Economic disparity**
  - Despite their wealth of natural resources, many of the regions demanding separate Statehood remain economically disadvantaged. This disparity often leads to disputes over the sharing and utilisation of these resources with the mother States.
- **Declining significance of language and culture**
  - While linguistic and cultural distinctions were once primary justifications for creating new States, these factors have become secondary in many recent cases.
- **Local resource competition**
  - Competition for access to local resources, such as water, land, and employment opportunities, has intensified demands for separate Statehood.
- **Government negligence**
  - Residents of these regions often feel neglected by the government, believing that their concerns are not adequately addressed.
- **Economic stagnation**
  - The inability of local economies to generate sufficient employment opportunities has exacerbated existing grievances and fueled demands for separate Statehood.
- **Popular mobilisation and democratic processes**
  - Democratisation has empowered marginalised groups to voice their aspirations through popular mobilisation and political channels.
- **'Sons of the soil' sentiment**
  - A strong sense of local identity, often rooted in the concept of being 'sons of the soil,' has fueled demands for greater control over local affairs.

Way forward

- **Economic and Social Viability:**
  - Base decisions on Statehood on thorough assessments of economic and social viability, ensuring the sustainable development of the newly created States.
- **Compensation Mechanisms:**
  - Establish fair and adequate compensation mechanisms for parent States to mitigate the potential loss of physical and human capital resulting from the creation of a new State.
- **Clear Parameters and Safeguards:**
  - Implement clear-cut parameters and safeguards to prevent arbitrary demands for Statehood, ensuring that the process is rational, transparent, and aligned with national interests.
- **Democratic Concerns as Priority:**
  - Prioritise democratic concerns such as development, decentralisation, and effective governance as the primary criteria for granting Statehood, emphasising the welfare of the population.
- **Address Fundamental Problems:**
  - Simultaneously address fundamental issues like concentration of power, corruption, and administrative inefficiency to enhance governance regardless of Statehood demands.

A balanced and inclusive approach that considers diverse factors will contribute to the harmonious development of regions seeking Statehood while preserving the unity and integrity of the nation.

CONCLUSION

The dynamic nature of centre-state relations reflects India's commitment to federalism while addressing the diverse needs of its States. Centre-state relations in India are designed to balance the power and responsibilities between the two, ensuring a unified yet diverse governance structure.

Emergency Provisions

14

INTRODUCTION

Indian Constitution's Emergency provisions **(Part XVIII, Articles 352 to 360)** empower the Central government to address exceptional situations. These provisions are in place to protect the nation's sovereignty, unity, integrity, and security, as well as to preserve the democratic system and the Constitution. During an Emergency, the Central government gains significant power, temporarily shifting from a quasi-federal system to a unitary system without a formal constitutional amendment.

In the Constitution of India, three kinds of emergencies have been envisaged - **National Emergency, State Emergency, and Financial Emergency.**

Note:

- To cope with crises in the country, the makers of the Indian Constitution incorporated certain emergency provisions in the Constitution.
- In doing so, they were influenced by the relevant provisions of the Government of India Act, **1935** and the Constitution of **Weimar Republic of Germany.**

National Emergency (Article 352)

Article 352 of the Indian Constitution grants the President the authority to declare a national emergency when the security of India or a portion of it faces threats from war, external aggression, or armed rebellion.

The 44th Amendment Act of 1978 replaced the term 'internal disturbance' with 'armed rebellion,' effectively eliminating the possibility of declaring a National Emergency based on 'internal disturbance.'

Article 352 and Judicial Review:

- The 38th Amendment Act of 1975 made the declaration of a National Emergency immune from judicial review. But, this provision was subsequently deleted by the 44th Amendment Act of 1978- Further, in the **Minerva Mills case" (1980),** the Supreme Court held that the proclamation of a National Emergency can be challenged in a court on the ground of malafide or that the declaration was based on wholly extraneous and irrelevant facts or is absurd or perverse.

- **Types of National Emergency:**
  - A National Emergency declared on the grounds of 'war' or 'external aggression' is referred to as an **'External Emergency.'**
  - When a National Emergency is declared due to 'armed rebellion,' it is known as an **'Internal Emergency.'**
- **Pre-emptive Declaration:**
  - The President can declare a National Emergency even in **anticipation of war,** external aggression, or armed rebellion if they are satisfied that there is an imminent danger. This provision allows the executive to proactively address impending crises.
- **Multiple Proclamations:**
  - The President can issue separate proclamations based on war, external aggression, armed rebellion, or imminent danger, regardless of whether an existing proclamation is in effect. This addition was introduced by the **38th Amendment Act of 1975.**
- **Scope of National Emergency:**
  - A proclamation of a National Emergency can apply to the entire country or only a specific part of it.
  - The 42nd Amendment Act of 1976 empowered the President to restrict the operation of a National Emergency to a **designated region within India.**

Proclamation of National Emergency - Safeguards and Approval:

- **Cabinet Recommendation:** The President can declare a national emergency only upon receiving a **written recommendation from the Cabinet.** This ensures that the decision is made collectively by the Cabinet, rather than solely on the advice of the Prime Minister. The **44th Amendment Act** of 1978 introduced this safeguard. In 1975, the then Prime Minister (Indira Gandhi) advised the President to proclaim emergency and the cabinet came to know about it after it was made.
- **Parliamentary Ratification:** The proclamation of a national emergency **must be ratified by both** the Houses of Parliament within **one month** from its issuance, as per the 44th Amendment Act of 1978. Originally, a two-month period was allowed for approval by the Parliament.
- **Dissolution of Lok Sabha:** If the Lok Sabha is dissolved at the time of the emergency declaration or during the one-month period without approving the proclamation, it remains in effect **until 30 days** from the first sitting of the reconstituted Lok Sabha, provided the Rajya Sabha has approved it in the meantime.
- **Duration and Extension:** After approval by both the Houses, the national emergency continues for six months **from the date of passage of the proclamation in**

the second house and can be extended indefinitely with Parliament's approval **every six months,** a provision also introduced by the **44th Amendment Act of 1978.**

- **Special Majority:** All resolutions related to national emergency must be passed by a special majority, **that is,** a majority of the total membership of the house and by a majority of not less than two-thirds of the members of the house present and voting. This special majority provision was introduced by the 44th Constitutional Amendment Act of 1978.

IGNITE YOUR MIND

Imagine that you are tasked with drafting a new constitution for a country, would you include emergency provisions ? Why or why not, and how would you ensure they are used responsibly?

Revocation of National Emergency:

- **President's Proclamation:** A proclamation of Emergency may be revoked by the President at any time by a subsequent proclamation. Such a proclamation does not require parliamentary approval. Moreover, the President must revoke a proclamation if a resolution disapproving the proclamation is passed by the Lok Sabha.

This provision of resolution by the Lok Sabha was added as a safeguard by the **44th Amendment Act of 1978.** Before the amendment, the Lok Sabha had no say in this regard.

- **Initiation of Discontinuation Proceedings:** The Lok Sabha holds the authority to initiate the process of discontinuing a national emergency.
- **Written Notice Requirement:** To initiate this process, Lok Sabha members must submit a written notice, signed by no less than **one-tenth of the total members (added by the 44th Amendment Act of 1978)**, indicating their intent to propose a resolution for ending the emergency.
- **Recipient of the Resolution:** The resolution, intended to terminate the emergency, should be directed either to the Speaker if the Lok Sabha is in session or to the **President** if the House is not in session.
- **Mandatory Special Session:** Upon receiving the notice, a special sitting of the Lok Sabha is mandated to be convened within **14 days** from the date of notice submission. This special session is specifically for the purpose of deliberating on the resolution to terminate the emergency.
- **Majority Vote Requirement:** For the resolution to be successful in discontinuing the emergency, it needs to secure a **simple majority** vote in the Lok Sabha. A simple majority means more members vote in favour than against.
- **Reinvocation Possibility:** It's important to note that even if the Lok Sabha successfully passes a resolution to discontinue the emergency, the President can reinstate it, if advised by the Council of Ministers. The emergency can thus be reinvoked based on their recommendations.

Effects of National Emergency:

- **Effect on Centre-State Relations:**
  - **Executive Changes:**
    - During a National Emergency, the Centre can **issue directives to any state** on "any" matter, effectively placing state governments under its control, although they are not suspended. In normal times, the centre can give executive directions to a state only on specific matters.
  - **Legislative Impact:**
    - The Parliament gains the **power to make laws on subjects in the State List**. While state legislatures retain their legislative authority, it is subject to the overriding supremacy of the Parliament. This shift temporarily transforms the Constitution from federal to a unitary system during the emergency. Laws passed by Parliament on state subjects become **inoperative six months after the emergency ends**.
    - If the Parliament is not in session, the President can issue ordinances on the state subjects also, during the proclamation of national emergency.
    - The Parliament can give powers to the Centre or its authorities to carry out the laws (even for matters outside the Union List) made by it under its extended jurisdiction.

The two provisions of the ordinance-making and the conferment of power to the Centre can be extended to other parts of the country beyond the state where the Emergency is in operation. This was added by the 42nd Amendment Act of 1976.

- **Revenue Alteration (Article 354):**
  - The President can modify the distribution of revenues between the Centre and states during a national emergency. This may involve **reducing or canceling** financial transfers from the Centre to the states. These **modifications persist until the end of the financial year in which the emergency ceases** and requires approval by both the Houses of Parliament.
- **Effect on the Life of the Lok Sabha and State Assembly:**
  - **Extension of Terms:**
    - During a National Emergency, the life of the Lok Sabha **(and State Assemblies)** can be extended beyond their normal terms. The Parliament may pass a law to extend the term for **one year at a time,** multiple times.

- But this extension ceases to continue beyond a period of six months after the emergency's end.

- **Effect on Fundamental Rights:**
  - **Suspension of Fundamental Rights under Article 19:**
    - Article 358 automatically suspends the six Fundamental Rights under Article 19 when a national emergency is declared on the grounds of **war or external aggression**. The state is **freed from restrictions on** making laws or taking executive actions that infringe upon these Fundamental Rights during the emergency.
    - When the emergency ends, Article 19 automatically revives, and any laws inconsistent with it, cease to have no effect.
    - No remedy lies for anything done during the emergency even after the Emergency expires (can not be challenged in the court).
  - **Suspension of Other Fundamental Rights under Article 359:**
    - Article 359 authorizes the President to **suspend the right to move any court for the enforcement of Fundamental Rights during a National Emergency**. **The 44th Constitutional Amendment ensured that rights under Article 20 and 21 remain enforceable.**
    - Only those Fundamental Rights specified in the Presidential Order are affected, and **their enforcement, not the rights themselves, is suspended.** The suspension can be for the emergency's duration or a shorter period **specified in the order** and may apply to the **whole or part of the country.** These suspensions must be laid before each House of Parliament for approval.

The 44th Amendment Act of 1978 restricted the scope of these articles:

- **Article 358:** Suspension of rights under **Article 19** takes place only when the proclamation is due to war or external aggression and **not on the ground of armed rebellion.** Further, laws and executive action related with the Emergency are protected from being challenged and not other laws or actions.
- **Article 359:** The right to protection under **Article 20 and 21** remain enforceable even during the Emergency. Same provision with the laws mentioned in the point above.

What are the differences between article 358 and article 359?

Aspect	Article 358	Article 359
Restriction on Fundamental Rights	Confined to Fundamental Rights under Article 19	Extends to all Fundamental Rights entailed in Presidential Order
Automatic Suspension of Rights	Automatically suspends Article 19 rights upon proclamation of National Emergency on the ground of war or external aggression. **Note:** Not imposed when the emergency is imposed due to armed rebellion. (Exception)	Does not automatically suspend any Fundamental Rights; it empowers the President to suspend specific rights.
Specific Rights Excluded	Suspends Article 19 completely.	Does not empower suspension of enforcement of Articles 20 and 21.
Geographic Scope	Extends to the entire country.	May extend to the entire country or a part of it.
Duration of Suspension	Suspends Article 19 rights for the entire duration of Emergency.	Suspends the enforcement of Fundamental Rights for a period specified by the President, which may be the entire duration or a shorter period.

Has there been any instance of declaration of National Emergency?

- National Emergency has been declared three times: in **1962, 1971, and 1975.**
- **First Declaration (1962)**
  - The first National Emergency was declared in October 1962 due to Chinese aggression in the **North-East Frontier Agency (now Arunachal Pradesh).**
  - It remained in force until January 1968.
  - This emergency obviated the need for a fresh declaration during the 1965 war with Pakistan.
- **Second Declaration (1971)**
  - The second National Emergency was declared in December 1971 in response to an attack by Pakistan.
- **Third Declaration (1975)**
  - The third National Emergency was declared in June 1975 on the grounds of "internal disturbance."
  - It was characterized by certain individuals inciting the police and armed forces against their normal duties.
  - Both the 2nd and 3rd proclamations were revoked in 1977.

IGNITE YOUR MIND

While the Emergency Provisions in the Indian Constitution were intended to safeguard national security and address extraordinary situations, their past misuse raises concerns about their potential for democratic erosion. How can we ensure that these provisions remain effective in addressing genuine emergencies while preventing their abuse for political gain or suppression of dissent?

- **Shah Commission Investigation**
  - The new government appointed the Shah Commission to investigate the circumstances that led to the declaration of the 1975 Emergency.
  - The commission did not justify the Emergency declaration.

- **Introduction of Safeguards (44th Amendment Act)**
  - In response to concerns about the misuse of Emergency provisions, the 44th Amendment Act was enacted in 1978.
  - This amendment introduced several safeguards against the misuse of Emergency powers.

State Emergency or President's Rule or Constitutional Emergency (Article 356)

Article 355 places a responsibility on the Centre to safeguard every state from external aggression and internal disturbances. It also ensures that the government of each state adheres to the provisions of the Constitution. When the Centre assumes governance of a state under Article 356 due to a breakdown in its constitutional machinery, it is commonly **known as "President's Rule".** This situation is also referred to as 'State Emergency' or 'Constitutional Emergency.' However, the Constitution does not use the word 'emergency' for this situation.

Grounds for Proclaiming President's Rule (Article 356 and Article 365):

- **Article 356:** This article grants the President the authority to issue a proclamation if he is convinced that a situation has arisen in which the state's government cannot function in accordance with the provisions of the Constitution. Importantly, the President can act on the report of the state's Governor or independently, without the Governor's report.
- **Article 365:** Article 365 stipulates that if a state fails to **adhere to or implement** directions issued by the Centre, the President is authorized to determine that a situation has arisen where the state's government cannot operate in accordance with the Constitution.

Proclamation of President's Rule - Approval and Duration:

- **Approval Process:**
  - A proclamation imposing President's Rule must receive approval from both the Houses of Parliament **within two months from its issuance.**
  - If the proclamation is issued when the Lok Sabha is dissolved or if its dissolution occurs within the two-month period without approval, the proclamation remains valid until 30 days from the first sitting of the Lok Sabha after its reconstitution, provided the Rajya Sabha approves it during this time.
- **Continuation and Extension:**
  - If approved by both the Houses of Parliament, **the President's Rule continues for six months from the date of issue of the Proclamation.**
  - It can be extended for a maximum of **three years** with Parliament's approval, renewed every six months.
  - If the Lok Sabha dissolves during the six-month period without approving the extension, the proclamation remains in force until 30 days from the first sitting of the Lok Sabha after its reconstitution, provided the Rajya Sabha has meanwhile approved the continuation.
- **Approval Mechanism:**
  - Resolutions approving the proclamation of President's Rule or its continuation can be passed by either House of Parliament with a **simple majority,** meaning a majority of members present and voting.
- **Restrictions on Extension:**
  - The 44th Amendment Act of 1978 introduced constraints on extending the President's Rule beyond one year.
  - **To extend it beyond one year, the following conditions must be met:**
    - A proclamation of National Emergency should be in effect across India or in the concerned state.
    - The Election Commission must **certify that holding general elections** for the state's legislative assembly is not feasible due to difficulties.
- **Revocation:**
  - The **President** can revoke a proclamation of President's Rule at any time by issuing a subsequent proclamation, and this action does **not necessitate parliamentary approval.**

DR. B.R. Ambedkar's thought on President Rule:

- "The intervention of the Centre must be deemed to be barred, because that would be an invasion on the sovereign authority of the province (state). That is a fundamental proposition which we must accept by reason of the fact that we have a Federal Constitution. That being so, if the Centre is to interfere in the administration of provincial affairs, it must be under

some obligation which the Constitution imposes upon the Centre. The proper thing we ought to expect is that such Articles will never be called into operation and that they would remain a dead-letter. If at all they are brought into operation, I hope the President who is endowed with this power will take proper precautions before actually suspending the administration of the province."

Effects of State Emergency

- **Assumption of State Functions:** The President, during President's Rule, can assume the functions of the state government and the powers vested in the Governor or any other executive authority within the state.
- **Legislative Powers:** The President has the authority to declare that the powers of the state legislature are to be exercised by the Parliament.
- **Suspension of Constitutional Provisions:** The President can take any other essential steps, including the suspension of constitutional provisions related to any state body or authority.
- **Implementation of President's Rule:**
  - When the President's Rule is imposed in a state, the President **dismisses the state** council of ministers led by the Chief Minister.
  - The State Governor, acting on behalf of the President, manages the state administration with the assistance of the Chief Secretary of the state or advisors appointed by the President.
- **Impact on Legislative Assemblies:**
  - A proclamation under Article 356 is commonly referred to as the imposition of 'President's Rule' in a State.
  - The President **may suspend or dissolve** the State Legislative Assembly. Supreme Court in the S.R. Bommai case restricting this power said that till the time Parliament approves the President's proclamation, he can only suspend the Legislative Assembly.
- **Powers during Legislative Suspension (Article 357):**
  - **Delegation of Law-Making:** Article 357 empowers Parliament to confer on the President the power of the Legislature of the State to make laws. And to authorize the President to delegate, subject to such conditions as he may think fit to impose, the power so conferred to any other authority.
    - **Lawmaking Authority:** The Parliament or, in the case of delegation, the President or the specified authority can create laws conferring powers and imposing duties on the Centre or its officers and authorities.
    - **Expenditure Authorization:** The President, when the Lok Sabha is not in session, can authorize expenditure from the State consolidated fund.
- **Continuity of Laws:**
  - Laws enacted by the Parliament, President, or any specified authority remain in effect even after the President's Rule. The **duration of such laws is not tied to the proclamation period.**
  - State legislatures can repeal, amend, or re-enact these laws.

IGNITE YOUR MIND

How can we strike a balance between ensuring stable governance in exceptional circumstances and upholding the autonomy of state governments?

- **Preservation of High Court's Powers:**
  - The President cannot assume the powers of the concerned state High Court or suspend constitutional provisions related to it.
  - The constitutional position, status, powers, and functions of the State High Court remain unchanged during the President's Rule.

HISTORICAL IMPOSITION OF PRESIDENT'S RULE

- **Frequency of Imposition:** Since 1950, President's Rule has been imposed on more than 125 occasions, making it a frequently used provision in the Constitution.
- **Controversial Nature:** Article 356 has been criticized and has become highly controversial due to its arbitrary use for political or personal reasons.
- **Initial Imposition:** President's Rule was **first imposed in Punjab in 1951**. Subsequently, almost all states have experienced President's Rule at least once.
- **Supreme Court's Rulings:** The Supreme Court's judgment in the **Bommai case (1994)** upheld the validity of the President's Rule based on the ground that secularism is a 'basic feature' of the Constitution. However, the court did not endorse the imposition of President's Rule in Nagaland in 1988, Karnataka in 1989, and Meghalaya in 1991.

President Rule in Various States of India

State	Years
Andhra Pradesh	1954-55, 1973, 2014
Arunachal Pradesh	1979-80, 2016
Assam	1979-80, 1981-82, 1982-83, 1990-91
Bihar	1968, 1969, 1972,, 1977, 1980, 1995, 1999, 2005
Goa	1966, 1979, 1990, 1999, 2005
Gujarat	1971, 1974, 1976, 1980, 1996
Haryana	1967, 1977, 1991
Himachal Pradesh	1977, 1992
Jammu and Kashmir	1965, 1977, 1986, 1990, 1996, 2002, 2008, 2018
Jharkhand	2009, 2010, 2013
Karnataka	1971, 1977, 1989, 1990, 2007 (twice)
Kerala	1959, 1964, 1970, 1979
Madhya Pradesh	1956, 1959, 1964, 1970, 1979
Maharashtra	1980, 2014, 2019
Manipur	1967, 1969, 1973, 1977, 1979, 1981, 1992, 1993, 2001
Meghalaya	1991, 2009
Mizoram	1977, 1978, 1988
Nagaland	1975, 1988, 1992, 2008
Odisha	1961, 1971, 1973, 1976, 1977, 1980
Puducherry	1968, 1974, 1978, 1983, 1991, 2021
Punjab	1951,1966, 1968, 1971, 1977, 1980, 1983, 1987
Rajasthan	1967, 1977, 1980, 1992
Sikkim	1978, 1984
Tamil Nadu	1976, 1980, 1988, 1991
Telangana	2014
Tripura	1971,1977,1993
Uttar Pradesh	1968,1970,1973,1975,1977,1980, 1992, 1995, 2002
Uttarakhand	2016
West Bengal	1968, 1970, 1971, 1977

Various Commission's Recommendation on President's Rule

1. **Sarkaria Commission (1988):**
   - President's Rule should be imposed **as a last resort,** with guidelines for its application.
   - Suggested the appointment of an independent authority to review the imposition of the President's Rule.
   - In case of a breakdown of public order, first exhaust all the alternative means, like sending paramilitary forces, security forces, and use of Article 352.
2. **Punchhi Commission (2007):**
   - The President's Rule should be imposed sparingly, and other alternatives should be explored first.

Note:

- **Judicial review and Article 356:** The principle that such Presidential Proclamation is not immune from judicial review was first established in the case of State of **Rajasthan v. Union of India** and has been expanded in the case of **Bommai v. Union of India.**

3. **National Commission to Review the Working of the Constitution:**
   - Before imposition, the center should indicate to the State government the matters in which it is not acting in accordance with the Constitution and then it has a reasonable opportunity to administer corrective action.

- Give specific reasons for the imposition of Article 356.
- Floor tests should be mandatory.
- The ground for dissolving/suspending the Legislative Assembly must also be clearly explained.

Comparison Between National Emergency and President's Rule

Aspects	National Emergency(Article 352)	Presidents Rule (Article 356)
Authority	**President of India**	**President of India**
Declaration	On the advice of the Cabinet	On the advice of the Governor or suo moto
Reason	❑ Threat to the security of India by war, external aggression, or armed rebellion.	❑ Breakdown of the constitutional machinery in a state.
Scope	❑ Entire country or specific states.	❑ Specific States (applies to individual states).
Duration	❑ Initially for 6 months, extendable with parliamentary approval.	❑ Initially for 6 months, extendable for up to 3 years with parliamentary approval in 6-month intervals.
Impact on Legislature	❑ **The Parliament** can make laws on the subjects of the State List only by itself, and can not delegate it to some other body.	❑ The Parliament can delegate the law making power to the President or to any authority specified by him. These are called President's Acts.
Impact on State Government	❑ The state government's authority is not directly affected during a National Emergency unless the President **assumes certain functions** of the State government.	❑ The State government is **directly** impacted as it is either dissolved or suspended, and the Governor assumes the **executive authority** on behalf of the President.
Fundamental Rights (FR)	❑ During a National Emergency, the President can suspend the enforcement of certain Fundamental Rights, with the exception of **Article 20 and Article 21.**	❑ Fundamental Rights, including the right to move the courts for the enforcement of FRs under **Article 32,** are unaffected.
Adoption of Proclamation Criteria	❑ National Emergency can be declared if the President is satisfied that there is a grave emergency due to war, external aggression, or armed rebellion.	❑ President's Rule can be imposed if there is a failure of the constitutional machinery in a state, as reported by the **Governor** or based on other information.
Revocation Method	❑ The President can revoke the proclamation of National Emergency, and it can also be done by a resolution by a **simple majority** in the Lok Sabha.	❑ President's Rule can be revoked by the President or on the recommendation of the Governor.

Financial Emergency (Article 360)

The President proclaims a Financial Emergency under Article 360 if he is satisfied that the financial stability or credit of India, or any part thereof is threatened.

Procedures and safeguards

- ❑ This proclamation must be approved **within two months** from the date of its issue by the Parliament with a simple majority, meaning a majority of the members present and voting.
- ❑ If the Lok Sabha is dissolved within that period of two months, the proclamation has to be approved within **thirty days** of the first sitting of the newly constituted Lok Sabha, **provided that the Proclamation has been approved by the Rajya Sabha**. It can continue for an indefinite period, till it is revoked by the President.

Note:

- ❑ The 38th Amendment Act of 1975 initially established that the President's decision to declare a Financial Emergency was considered final and unquestionable in any court. However, the 44th Amendment Act of 1978 removed this provision, indicating that the President's satisfaction could be subject to judicial review.

- ❑ **This implies two key aspects:**
  - There is no defined maximum duration for its enforcement.
  - Repeated Parliamentary consent is not necessary for its extension.
- ❑ The President has the authority to revoke a Financial Emergency at any time through a subsequent proclamation, and this action does not necessitate parliamentary approval.

Note:

- A state of Financial Emergency has not been declared so far in the India even though the country did face a severe economic crisis in the years **1990-1991.**

Consequences of a Financial Emergency:

- **Executive Authority:** The Executive authority of the Union extends to giving directions to any state:
  - To follow financial propriety and any other directives deemed necessary by the President.
  - To Reserve all money bills or other financial bills for the consideration of the President after they have been passed by the state legislature.
  - The President also has the power to issue directions for reducing salaries and allowances for:
    - All or specific groups of individuals serving the Union.
    - Judges of the Supreme Court and the High Courts.

Critiques of Incorporating Emergency Provisions

Certain members of the Constituent Assembly raised objections to including emergency provisions in the Constitution for the following reasons:

- **Centralization of Power:** Some members of the Constituent Assembly were concerned that including emergency provisions would undermine the federal character of the Constitution. They believed that the Union government would become excessively dominant.
- **Presidential Authority:** Critics feared that the President could potentially assume dictatorial powers during an emergency, which would threaten the democratic principles enshrined in the Constitution.

IGNITE YOUR MIND

What do you think a financial emergency is, and why might it be necessary for a country to declare one? Imagine you are the finance minister during a financial emergency. What measures would you propose to address the economic challenges and restore financial stability in the country?

- **Financial Autonomy:** It was argued that the financial autonomy of the states might be nullified, implying that the states would lose control over their finances.
- **Erosion of Fundamental Rights:** Concerns were raised that the invocation of emergency provisions could render fundamental rights meaningless, thereby undermining the democratic foundations of the Constitution.

CONCLUSION

The declaration of an emergency has significant implications, including an alteration in the federal structure, the centralization of powers, and restrictions on civil liberties. The emergency provisions are designed to safeguard the nation in times of crisis but have also been a subject of debate and criticism, especially concerning their potential misuse for political gains. That's why its implementation should involve consultation with all the relevant stakeholders and steps should be taken to ensure proper governance in extraordinary situations.

Union Executive-I

15

INTRODUCTION

The Union executive consists of the President, the Vice-President, and the Council of Ministers, with the Prime Minister as the head to aid and advise the President and the Attorney General of India. The provisions regarding the Union executive are outlined in **Articles 52 to 78** within **Part V of the Constitution**.

The President of India holds a ceremonial position as the foremost constitutional authority in the Republic of India. He is the first citizen of India, and the President embodies the ideals of unity, integrity, and solidarity.

Former PM Jawaharlal Nehru on the post of President of India - **"President is the Head that neither reign nor governs" but holds a position of "authority or dignity"**

PRESIDENT OF INDIA

Why do we need a President in India?

- The Indian Constitution establishes a Parliamentary form of government, characterised by **dual executive heads – the nominal and the real executive.**
- The presence of a nominal head is primarily intended **to ensure the continuity of government**. His/her role during the absence of any party with a clear majority in General Elections is very crucial.
- The Parliamentary system of government is inherently **subject to instability**, as the government can be dismissed if it loses a vote of confidence. Therefore, the President steps in as the head of state during such periods.
- Another key reason for having a President is to **maintain a "neutral head"** who represents the perspectives of all political parties.
- The President's office symbolizes a **"nonpartisan"** institution. This is why we often witness opposition Members of Parliament visiting the President to express concerns about the actions of the ruling government and urging the President to take appropriate actions.

Article 52 of the Indian Constitution states that there shall be a **President of India.**

Election of The President

- The Constitutional provision for the election of the President was established through the Presidential and Vice-Presidential Election Act of 1952.
- The election procedure has been taken from the **Irish Constitution.**

Article 54 - Electoral College Composition

- The President of India is **elected** through an electoral college comprised of the following members:
  1. Elected members of both the Houses of Parliament.
  2. Elected members of the legislative assemblies of the states.
  3. Elected members of the legislative assemblies of the Union Territories of Delhi and Puducherry.

Exclusions from the Electoral College:

- Nominated members of both Houses of Parliament, nominated members of State Legislative Assemblies, members (both elected and nominated) of State legislative councils (in the case of bicameral legislatures), and nominated members of the Legislative Assemblies of Delhi and Puducherry are not involved in the President's election.

Reasons for Inclusion of MLAs and Exclusion Of MLCs	
Inclusion of MLAs	**Exclusion of MLCs**
❑ Excluding the MLA would reduce the President to a creature of the majority party and **pale shadow** of the PM. ❑ He is the symbol of unity and integrity of the whole nation.	❑ Legislative councils do not exist in all states. ❑ The procedure for their creation and abolishment may be abused to get an unfair advantage in the electoral college.

Impact of Assembly Dissolution:

- In instances where a legislative assembly is dissolved, its members no longer qualify to vote in the presidential election, even if fresh elections for the dissolved assembly have not been conducted before the Presidential election.

Article 55 - Manner of Election

- The President of India is indirectly elected by an Electoral College using **a system of proportional representation with a single transferable vote and secret ballots.**

- Elected Members of Parliament (MPs) and Legislative Assemblies (MLAs) cast their votes based on parity and uniformity values.

IGNITE YOUR MIND

What changes would you advocate to ensure a more dynamic and responsive presidency in contemporary times?

Single Vote System

- During the Presidential election, **each voter can cast only one vote.**
- While the value of votes by **MLAs may vary from state to state** (due to variations in a number of legislative assembly seats and the population of the state), the votes by **MPs remain constant.**
- **For instance,** an **MLA from UP has a value of 208, while an MLA from Sikkim has value of 7**. The population of the state, as per the 1971 census, is taken for the calculation. **84th Constitutional Amendment Act** of 2001, population is ascertained as that in 1971 census until the first census after 2026 has been published.
- The Constitution provides that there shall be uniformity in the scale of representation of different states as well as parity between the states as a whole and the Union at the election of the President.

Value of the vote of an MLA:

$$= \frac{\text{Total population of state}}{\text{Total number of elected members in the state legislative assembly}} \times \frac{1}{1000}$$

Value of the vote an MP:

$$= \frac{\text{Total value of votes of all MLAs of all state}}{\text{Total number of elected members in Parliament}}$$

- The **total value of MPs' votes must equal the total value of MLAs' votes** to maintain the State and Union balance.

Quotas:

- The candidate who reaches the winning quota or exceeds it is declared the winner.
- Electoral Quota as mentioned below:

$$\text{Electoral quota} = \frac{\text{Total number of valid votes polled}}{1+1=(2)} + 1$$

For the **2022 Presidential Election**, the value of the vote of a Member of Parliament (MP) has gone down to 700 from 708 in the Presidential poll due to the absence of a legislative assembly in Jammu and Kashmir.

State MLAs Vote Value for Presidential Elections 2022

Name of State	Number of Assembly seats	Population (1971 Census)	Value of vote of each MLA	Total value of votes for the state (B x D)
A	B	C	D	E
Andhra Pradesh	175	2,78,00,586	159	27,825
Arunachal Pradesh	60	4,67,511	8	480
Assam	126	1,46,25,152	116	14,616
Bihar	243	4,21,26,236	173	42,039
Chhattisgarh	90	1,16,37,494	129	11,610
Goa	40	7,95,120	20	800
Gujarat	182	2,66,97,475	147	26,754
Haryana	90	1,00,36,808	112	10,080
Himachal Pradesh	68	34,60,434	51	3,468
Jammu and Kashmir	87	63,00,000	72	6,264
Jharkhand	81	1,42,27,133	176	14,256

Karnataka	224	2,92,99,014	131	29,344
Kerala	140	2,13,47,375	152	21,280
Madhya Pradesh	230	3,00,16,625	131	30,130
Maharashtra	288	5,04,12,235	175	50,400
Manipur	60	10,72,753	18	1,080
Meghalaya	60	10,11,699	17	1,020
Mizoram	40	3,32,390	8	320
Nagaland	60	5,16,449	9	540
Odisha	147	2,19,44,615	149	21,903
Punjab	117	1,35,51,060	116	13,572
Rajasthan	200	2,57,65,806	129	25,800
Sikkim	32	2,09,843	7	224
Tamil Nadu	234	4,11,99,168	176	41,184
Telangana	119	1,57,02,122	132	15,708
Tripura	60	15,56,342	26	1,560
Uttarakhand	70	44,91,239	64	4,480
Uttar Pradesh	403	8,38,49,905	208	83,824
West Bengal	294	4,43,12,011	151	44,394
NCT of Delhi	70	40,65,698	58	4,060
Puducherry	30	4,71,707	16	480
Total	4,120	54,93,02,005		5,49,495

Voters' Preference

- Each voter is given only one ballot paper, and the voter is required to indicate his preferences by marking 1,2,3, etc. against the names of candidates.
- If the first-preference candidate doesn't reach the winning quota, then the first-preferred candidate with the lowest vote is eliminated, and their votes are transferred to the remaining candidates.
- The process continues till a candidate secures the required quota.
- This system ensures that the winning candidate is returned by the absolute majority.
- The **Anti-defection law,** which disallows MPs from crossing the party line, **does not apply to the Presidential election.** This means that the MPs and MLAs can keep their ballot secret.

Why Proportional Representation System?

- The President of India is elected through proportional representation using the single transferable vote system **(Article 55(3)).**
- This system allows independent candidates and minority parties to have representation.
- It encourages coalition politics with diverse voter support.
- It ensures elected candidates don't solely represent the majority's opinion.

Why Indirect Election?

- Directly electing the President would be **complex and potentially chaotic**. The public may lack a clear understanding of the President's role or the suitability of candidates.
- Direct elections would **require candidates to campaign nationwide** with political party support, causing instability.
- The **logistical challenges** and costs of a direct election would strain government resources.
- Indirect elections **maintain the dignity and neutrality of the President's role** and minimise hostilities between states.

IGNITE YOUR MIND

Do you think that technology can be leveraged to enhance transparency and engagement in the electoral process?

In case of dispute related to Presidential Elections

- **Article 71** implies that all doubts and disputes related to election of President and Vice President shall be inquired and **settled by the Supreme Court** whose decision is **final.** It also states that no such disputes can be raised on the grounds of any vacancy in the electoral college.

Term, Impeachment and Vacancy

Term of Presidential Office - Article 56

- **Five-Year Term:**
  - The President's term in office spans five years, commencing from the day they assume the position.
  - The President has the option to resign from their office at any time by submitting a **resignation letter to the Vice-President.**
  - Additionally, the President can be removed from office before completing the five-year term through the impeachment process.

Nomination Requirements: The Presidential and Vice-Presidential Elections (Ammendment) Act, 1997

- A candidate's nomination for the presidential election must be **supported by at least 50 electors as proposers and 50 electors as seconders.**
- Every candidate is required to make a security deposit of ₹15,000 in the Reserve Bank of India, which may be forfeited if the candidate fails to secure one-sixth of the votes polled. The number of proposers and seconders used to be ten each, with a security deposit of ₹2,500 before 1997. These requirements were increased in 1997 to discourage non-serious candidates.

- **Extension and Re-election:**
  - The President has the potential to continue in office beyond the initial five-year term until their successor assumes office.
  - Furthermore, the President is **eligible for re-election (Article - 57)** to the same office and can serve for any number of terms.
  - It's worth noting that in the United States, a person cannot be elected to the office of President more than twice.

Qualifications, Oath and Conditions for Presidential Election

- Qualifications - Article 58
- To qualify for election as President of India, a person must meet the following requirements:
  - Be a citizen of India.
  - Have reached the age of **35 years.**
  - Be eligible for election as a member of the Lok Sabha (the lower house of Parliament).
- Not hold any office of profit under the Union government, any state government, a local authority, or any other public authority. Notably, sitting Presidents, Vice-Presidents of the Union, Governors of states, and Union or state ministers are exempt from this restriction as they are not considered to hold any office of profit and can be eligible presidential candidates.

The history behind having proposers and seconders

- The requirement of having a certain number of electors propose a candidate was introduced after the experience of the first five Presidential elections. It was common then for several candidates to put themselves up for election when they did not have a remote chance of getting elected. In the 1967 Presidential elections, 17 candidates contested, but nine of them did not win a single vote. This repeated again in the 1969 elections, when out of 15 candidates, five did not secure any votes. To discourage the practice, candidates had to secure at least 10 proposers and seconders each to contest the elections from the 1974 election onwards. A compulsory security deposit of Rs 2,500 was also introduced. The changes were brought in through an amendment to the Presidential and Vice-Presidential Act, 1952.

Conditions of the President's Office - Article 59

The Constitution of India stipulates the following conditions for the President's office:

- The President should not be a member of either House of the Parliament or a State Legislature. If a person holding such a position is elected as the President, they are considered to have vacated their legislative seat on the date they assume the presidency.
- The President should not hold any other office of profit.
- The President is entitled to the use of their official residence, the Rashtrapati Bhavan, without payment of rent.
- The President's emoluments, allowances, and privileges are determined by Parliament.
- During the President's term of office, their emoluments and allowances cannot be reduced.

Privileges and Immunities

- Personal immunity from legal liability for his official acts.
- Immunity from any criminal proceedings against him during his term of office even in respect of his personal acts.
- He can not be arrested or imprisoned.

- However, civil proceedings can be instituted against him during his term of office in respect of his personal acts, after giving two month's notice.

Oath or Affirmation by the President - Article 60

- Prior to assuming the office, the President is required to take and subscribe to an oath or affirmation. In this oath, the President pledges:
- To faithfully execute the office.
- To preserve, protect, and defend the Constitution and the law.
- To dedicate themselves to the service and welfare of the people of India.
- The oath of office to the President is administered by the Chief Justice of India and in his absence, the senior most judge of the Supreme Court available.
- Any other person acting as President or discharging the functions of the President also undertakes the similar oath or affirmation.

Impeachment of the President of India - Article 61

- **Article 61** of the Indian Constitution allows for the impeachment of the President on the grounds of violating the Constitution, although the Constitution does not provide a precise definition of **"violation of the Constitution."** This process is quasi-judicial in nature.
- The Parliament of India can remove the President before the completion of their term through impeachment.
  - Elected as well as nominated members of the Parliament participate in the impeachment process.
  - The elected members of the legislative assemblies of states and union territories of Delhi and Union Territories do not participate in impeaching, though they participate in the election process.

Initiating the Process:

- The impeachment process can be initiated in either house of Parliament, which levels charges against the President.
- These charges are outlined in a notice, which **must be signed by at least one-quarter of the total members of that house.**
- The notice is then sent to the President, and **14 days later,** it is taken up for consideration.

Procedure:

- A resolution for impeachment must pass with **a two-thirds majority** of the total members in the house where it originated.
- Subsequently, it is sent to the other house for further investigation. During this phase, the President has the right to defend themselves and be represented.
- If the second house also approves the **charges by a two-thirds of the total membership,** the President is impeached and considered to have vacated their office from the date of the resolution's passage.
- It's important to note that no President has faced impeachment proceedings in India, so these provisions have never been utilised.

Vacancy in the President's Office

- **A vacancy in the President's office can occur through various means:**
  1. Expiry of the President's five-year term.
  2. Resignation.
  3. Removal via impeachment.
  4. Death.
  5. Other disqualifications or annulment of their election.

Election to Fill Vacancy-Article 62:

- When a vacancy is impending due to the President's term expiration, an election to fill the vacancy must be held before the term concludes. If there's any delay in the election, the outgoing President continues in office to avoid an 'interregnum.' **The Vice-President does not assume the role of the President in this situation.**
- In cases of vacancy due to resignation, removal, death, or other reasons, an election to fill the vacancy should be conducted within six months. The newly-elected President serves a full term of five years from the date they assume office.

Role of the Vice-President:

- When a vacancy occurs in the President's office due to resignation, removal, death, or other reasons, the Vice-President serves as the acting President until a new President is elected.

Role of the Chief Justice of India:

- In the case the office of the Vice-President is vacant, the Chief Justice of India (or the senior-most available judge of the Supreme Court) acts as the President or fulfils the President's functions.

Powers, Immunities, and Benefits:

- When someone, whether the Vice-President, the Chief Justice of India, or the senior-most judge of the Supreme Court, acts as the President or fulfils their functions, they possess all the powers and immunities of the President and are entitled to emoluments, allowances, and privileges determined by the Parliament.

Difference between President of India and President of the United States

Dimension	US President	Indian President
Election	❑ Elected by the Electoral College, which consists of 538 electors from 50 states and the District of Columbia.	❑ Elected by an electoral college, which consists of the elected members of both houses of Parliament and the elected members of the Legislative Assemblies of the States.
Term	❑ Four years, renewable once.	❑ Five years, renewable any number of times.
Powers	❑ Executive head of the government and the commander-in-chief of the armed forces.	❑ Constitutional head of the state and the supreme commander of the armed forces.
Veto	❑ Can veto any bill passed by the Congress, but the veto can be overridden by a two-thirds majority in both houses.	❑ Can return any bill (except money bills) passed by the Parliament for reconsideration, but the Parliament can re-pass the bill without any changes and the President has to give assent.
Impeachment	❑ Can be impeached by the House of Representatives and tried by the Senate on the grounds of treason, bribery, or other high crimes and misdemeanours.	❑ Can be impeached by either house of the Parliament on the ground of violation of the Constitution.
Immunity	❑ Cannot be indicted or arrested during the term of office, but can be prosecuted after leaving office.	❑ Cannot be answerable to any court for the exercise and performance of the powers and duties of his office, but can be prosecuted for any other offence after leaving office.
Role in foreign policy	❑ Has the power to make treaties, appoint ambassadors, and receive foreign dignitaries.	❑ Acts on the advice of the Prime Minister and the Cabinet in matters of foreign policy.
Role in domestic policy	❑ Has the power to issue executive orders, appoint federal judges, and grant pardons.	❑ Has the power to appoint the Prime Minister, the Chief Justice of India, and other constitutional authorities.
Role in emergency	❑ Can declare a national emergency, subject to the approval of the Congress.	❑ Can declare a national, state, or financial emergency, subject to the approval of the Parliament.

Dr. BR Ambedkar on the post of President:

"The title of the functionary (President) reminds of the President of United States. But beyond the identity of titles is nothing in common between the two. Under Indian Constitution, the President occupies the same position as the king under the English Constitution.

Powers and Functions of The President

The President's powers and functions can be categorised into the following areas:

1. Executive Powers

❑ **Administrative Power (Article 77):**

- Formalizing all executive actions of the Government of India in his name.
- Making rules specifying how orders and instruments executed in his name are authenticated.
- Creating rules for the efficient conduct of Union government business and the allocation of such business among ministers.

❑ **Appointing the Prime Minister** and other ministers who serve at his pleasure (**Article 75**).

❑ Appointing the Comptroller and Auditor General of India, the Attorney General, the Chief Election Commissioner, election commissioners, the members of the Union Public Service Commission, Governors, members of the Finance Commission, and more.

❑ **Seeking information** related to Union affairs and legislative proposals from the Prime Minister **(Article 78)**.

❑ If a minister makes a decision that hasn't been discussed or approved by the Council of Ministers, the President can require the Prime Minister to bring that matter before the Council for collective consideration (**Article 78**).

❑ Appointing a commission to investigate the conditions of Scheduled Castes, Scheduled Tribes, and other backward classes.

❑ **Establishing an inter-state council** to promote Centre-state and inter-state cooperation (**Article 263**).

- Directly administering union territories through administrators appointed by him.
- Declaring any area as a scheduled area and possessing powers over the administration of scheduled and tribal areas.
- Granting pardon, reprieve, respite, or commutation of sentences for individuals convicted of offences (This is not a judicial power):
  - Punishable by a court-martial.
  - Committed under Union laws.
  - Punishable by death.

2. Legislative Powers

- Summoning or proroguing Parliament and dissolving the Lok Sabha (**Article 85**).
- He can also convene a joint session of both houses of the Parliament, presided over by the Lok Sabha Speaker.
- Right of the President to address and send messages to Houses (**Article 86**):
  - The President may address either House of Parliament or both Houses assembled together, and for that purpose require the attendance of members.
  - Sending messages to Parliament, whether related to pending bills or other matters.
- Special address by the President (**Article 87**) :
  - At the commencement of the **first session** after each general election to the House of the People and at the commencement of the first session of each year the President shall address both Houses of Parliament assembled together and inform Parliament of the causes of its summons.
  - At the end of the discussion of the President's address, a motion of thanks is passed by the Parliament. If it is not passed, it amounts to almost a vote of no-confidence against the government.
- Appointing a member of the Lok Sabha to preside over its proceedings when the offices of the Speaker and the Deputy Speaker fall vacant. Similarly, appointing a member of the Rajya Sabha to preside over its proceedings when the offices of the Chairman and the Deputy Chairman fall vacant.
- **Nominating 12 members to the Rajya Sabha** from individuals with special knowledge or practical experience in literature, science, art, and social service.
- Deciding on disqualifications of members of the Parliament, in consultation with the Election Commission.
- Requiring prior recommendations or permissions to introduce certain types of bills, such as those involving expenditures from the Consolidated Fund of India or altering state boundaries, Bills affecting taxation in which States are interested, etc.
- When a bill is passed by the Parliament and presented to the President, he has three alternatives (**Article 111**)
  - He/she can assent to it,
  - Withhold assent, or
  - Return it (if it's not a money bill) for Parliament's reconsideration.
  - However, if the bill is passed by Parliament again, with or without amendments, the President must give his assent (Suspensive veto).
- When a bill passed by a **State Legislature** is reserved for the President's consideration by the Governor, the President can assent, withhold assent, or direct the Governor to return it (if it's not a money bill) for reconsideration. The President is **not obliged to give assent, even if the bill is passed again by the state legislature** and sent back for consideration (**Article 201**).
- The President **can issue ordinances** when Parliament is not in session, which must be approved by Parliament within six weeks of its reassembly. He can also withdraw an ordinance at any time (**Article 123**).
- Laying reports of the Comptroller and Auditor General, Union Public Service Commission, Finance Commission, and others before Parliament.
- Making regulations for the governance of Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli, Daman and Diu, and Ladakh. For Puducherry, the President can legislate through regulations when the assembly is suspended or dissolved.

3. Financial Powers

(a) **Introduction of money bills** in Parliament only with the President's prior recommendation.

(b) **Presentation of the annual financial** statement (Union Budget) to Parliament.

(c) **Demand for grant approval** can be made only on the President's recommendation.

(d) **Authority to make advances from the contingency fund** of India to address unforeseen expenses.

(e) **Establishment of a finance commission** every five years to recommend revenue distribution between the Centre and the states.

4. Judicial Powers

- Appointing the Chief Justice and judges of the Supreme Court and high courts.
- Seeking advice from the Supreme Court on legal or factual questions, although the Supreme Court's advice is non-binding (under Article 143).

5. Diplomatic Powers

The President represents India in international negotiations and agreements. However, these agreements require parliamentary approval. The President also sends and receives diplomats, such as Ambassadors and High Commissioners.

6. Military Powers

The President serves as the supreme commander of India's defence forces, appointing the chiefs of the Army, the Navy, and the Air Force. He can declare war or conclude peace, subject to Parliament's approval.

7. Emergency Powers

Apart from standard powers, the Constitution grants the President extraordinary authority to address the following types of emergencies:

(a) National Emergency (Article 352)

(b) President's Rule (Article 356)

(c) Financial Emergency (Article 360)

8. Discretionary powers of the President

The Indian constitution does not explicitly provide the President with any discretionary powers. **However, he has a few situational discretions under the below-mentioned situations:**

- **Selection of the Prime Minister** when no party has a clear majority in the Lok Sabha or when there is a vacancy in the Prime Minister's office due to the sudden death of the PM.
- **Dissolution of the Lok Sabha** if the council of ministers has lost its majority vote.

The veto power of the President

Absolute Veto

The President wields absolute veto power by withholding his assent to a bill that has been approved by Parliament. **This results in the bill's termination and its inability to become law**. This veto is primarily exercised in two circumstances:

(a) In the case of private members' bills (i.e., bills introduced by any Member of Parliament who is not a minister).

(b) In situations where the government bills are passed by the Parliament, but the cabinet resigns before the President's assent is given, and the new cabinet advises the President not to grant assent to those bills.

Instances of Absolute Veto:

1. **In 1954, President Dr Rajendra Prasad** withheld his assent to the PEPSU Appropriation Bill, which had been passed by Parliament during the imposition of President's Rule in the state of PEPSU. However, when the bill was submitted for the President's assent, the President's Rule was lifted.
2. **In 1991, President R Venkataraman** withheld his assent to the Salary, Allowances, and Pension of Members of Parliament (Amendment) Bill, which was passed by Parliament without obtaining the prior recommendation of the President on the last day before the dissolution of Lok Sabha.

Suspensive Veto

- The President exercises the suspensive veto **when returning a bill to the Parliament for reconsideration**. Nevertheless, if the bill is passed again by the Parliament, with or without amendments, and then presented to the President once more, it becomes mandatory for the President to grant assent to the bill.
- In this scenario, the presidential veto can be **overridden by a simple majority**, unlike in the United States, where a higher majority is required.
- However, it's important to note that the President **does not possess this veto power in the case of money bills or Constitutional Amendment bills.** The President can either grant assent to a money bill or withhold his assent to it, but cannot return it for Parliament's reconsideration. Typically, the President grants assent to money bills as they are introduced in the Parliament with the President's prior permission.

Pocket Veto

- In a pocket veto, the President **refrains from ratifying, rejecting, or returning the bill and simply keeps it pending indefinitely.** This power to take no action, whether positive or negative, on a bill is known as a pocket veto.
- Unlike in the United States, where the President must return a bill for reconsideration within 10 days, the Indian Constitution **does not specify a time limit** for the President's decision on a bill presented for assent. Therefore, it can be said that the Indian President's "pocket" is more substantial than that of the American President.
- **Instance of Pocket Veto: In 1986, President Zail Singh** exercised the pocket veto regarding the Indian Post Office (Amendment) Bill, which had been passed by the Rajiv Gandhi Government. The bill imposed restrictions on the freedom of the press and faced widespread criticism.

Qualified Veto:

- It is veto which can be overridden by the legislature with a higher majority. Indian President has not entitled with qualified veto. However, it is possessed by the American President.

- It's important to emphasise that the **President has no veto power with respect to constitutional amendment bills.** The 24th Constitutional Amendment Act of 1971 made it obligatory for the President to grant assent to constitutional amendment bills.

Presidential Veto over State Legislation

- The President also has veto power over state legislation. A bill passed by a State Legislature can only become law if it receives the assent of the Governor or the President (in cases where the bill is reserved for the President's consideration).

When a bill passed by a state legislature is presented to the Governor for assent, the Governor has four options under Article 200 of the Constitution:

1. Grant assent to the bill.
2. Withhold assent to the bill.
3. Return the bill (if it is not a money bill) for the reconsideration of the state legislature.
4. Reserve the bill for the President's consideration.

When a bill is reserved by the Governor for the President's consideration, the President has three options under **Article 201 of the Constitution:**

- Grant assent to the bill.
- Withhold assent to the bill.
- Instruct the Governor to return the bill (if it is not a money bill) for the reconsideration of the state legislature. If the bill is passed again by the state legislature, with or without amendments, and then it is directly presented to the President for consideration, the President is **not obligated to grant assent** to the bill.

As per the recommendation of the Sarkaria Commission, the President must make up his mind on the state legislation within 4 months.

- This means that the state legislature cannot override the President's veto power. Furthermore, the Constitution **does not prescribe a time limit** for the President to make a decision regarding a bill reserved by the Governor for consideration. Consequently, the President can also exercise a pocket veto with regard to state legislation.

Ordinance Making Power

Article 123 of the Constitution confers the President the authority to promulgate ordinances during the recess of Parliament. These ordinances possess the same legal force and effect as acts of Parliament but are essentially temporary laws.

Article 123

- Power of President to promulgate Ordinances during recess of Parliament.
- If at any time, except when both Houses of Parliament are in session, the President is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinance as the circumstances appear to him to require.

Limitations on Ordinance-Making Power

The President's exercise of this ordinance-making power is subject to four essential limitations:

- **At least one house in recess:** Ordinarily, the President can promulgate an ordinance only when both the Houses of the Parliament are not in session or when either of the two Houses is not in session. However, an ordinance can be issued when only one House is in session, as a law can only be enacted with the approval of both Houses.
  - An ordinance created when both Houses are in session is invalid, underscoring that the President's ordinance-making power is not a parallel legislative authority.
- **Immediate Action Requirement:** The President may issue an ordinance only when he is satisfied that circumstances necessitate immediate action. Notably, the President's decision to issue an ordinance can be legally challenged in a court on the grounds of malafide.
  - In other words, if it can be demonstrated that the President has prorogued one or both Houses of Parliament deliberately to promulgate an ordinance on a contentious matter, thereby bypassing parliamentary decision and undermining the authority of Parliament, the decision to issue the ordinance can be questioned.
  - The **38th Constitutional Amendment Act of 1975** initially rendered the President's satisfaction final and beyond judicial review, but the **44th Constitutional Amendment Act** of 1978 removed this provision. Consequently, the President's satisfaction is subject to judicial scrutiny on the basis of malafide.
- **Scope and Constitutional Limitations:** The ordinance-making power of the President extends to all matters that Parliament can legislate on, except for the duration aspect. This means an ordinance can be issued only on subjects over which Parliament can make laws and is subject to the same constitutional limitations as an act of the Parliament. Consequently, an ordinance cannot infringe upon or curtail any fundamental rights.
- The President can't promulgate ordinances with respect to Constitutional amendment.
- **Parliamentary Oversight:** Every ordinance issued by the President during Parliament's recess must be presented before both Houses of Parliament when they reconvene. If the ordinance receives approval from both the Houses, it becomes an act. If Parliament takes no action, the ordinance ceases to have legal effect six weeks from Parliament's reconvening. Additionally, the ordinance may cease to have effect earlier than the specified six-week period if both the Houses of Parliament pass resolutions disapproving it.
  - If Parliament is convened on different dates, the six-week period is counted from the later of those dates. This means that the maximum duration of an ordinance can be six months and six weeks in the absence of parliamentary approval (six months being the maximum interval between two parliamentary

sessions). If an ordinance lapses without being presented before Parliament, actions undertaken under it, before it lapses, remain fully valid and effective.

Presidential Authority and Withdrawal

The President retains the ability to withdraw an ordinance at any time. However, the power to promulgate or withdraw an ordinance is not discretionary and can **only be exercised on the advice of the council of ministers** led by the Prime Minister.

Unique Feature in Indian Constitution:

- The ordinance-making power of the President in India is distinct and not found in most democratic constitutions worldwide, including the United States and the United Kingdom. **Dr. B.R. Ambedkar**, during the Constituent Assembly debates, justified this power as a mechanism to enable the Executive to address situations that may suddenly and urgently arise when the Parliament is not in session.
- It's important to note that this power does not necessarily relate to a national emergency as envisioned in Article 352. The President can issue an ordinance even in the absence of war, external aggression, or armed rebellion.

Retrospective Nature and Scope

Similar to other forms of legislation, an ordinance can be retrospective, coming into effect from a past date. It may also modify or repeal an existing act of Parliament or another ordinance. Furthermore, it can amend tax laws. However, it cannot be used to amend the Constitution.

Transparency Requirement

The rules of Lok Sabha mandate that when a bill is introduced to replace an ordinance, a **statement explaining the circumstances necessitating immediate legislation** by ordinance must be presented before the House. To date, no legal case has been brought before the Supreme Court regarding the President's promulgation of ordinances.

Relevant Judicial Ruling

- The Supreme Court's judgement in the **D.C. Wadhwa case (1987)** is noteworthy. In this case, the court observed that between 1967 and 1981, the Governor of Bihar promulgated 256 ordinances, and these ordinances remained in force for durations ranging from one to fourteen years due to repeated promulgations.
- In the **Krishna Kumar Case, 2017** the apex court agreed that the **wisdom of an ordinance can be questioned** in the court of law. Also, the court said that the decisions taken under a lapsed ordinance can be reversed.

The court held that the repeated re-promulgation of ordinances without any effort to have the bills passed by the legislative assembly would violate the Constitution. Ordinances subjected to such re-promulgation could be declared invalid. The court emphasised that the extraordinary power of law-making through ordinances should not be used as a substitute for the legislative power of the state legislature.

Pardoning Power of the President

Article 72 of the Constitution empowers the President of India to grant pardons to individuals who have been tried and convicted of various offences under specific conditions:

- When the punishment or sentence is related to an offence against Union Law.
- When the punishment or sentence is passed by a court martial (military court).
- When the sentence is one of death.

It is important to note that the President's pardoning power is **not a judicial function** but **an executive authority.** While exercising this power, the President does **not act as a court of appeal**.

- The key objectives of granting this authority to the President are two fold:
  - to provide a means to correct any judicial errors that may have occurred in the application of the law, and
  - to offer relief from sentences that are deemed unduly harsh by the President.

The President's pardoning power encompasses several forms of clemency:

- **Pardon:** This entails a complete absolution of the individual from the crime, allowing them to resume their life as an ordinary citizen.
- **Commutation:** It involves changing the type of punishment imposed on the guilty to a less severe one. For instance, the death penalty may be commuted to a life sentence.
- **Reprieve:** This grants a delay in the execution of a sentence, often in the case of a death sentence, allowing the individual time to apply for a Presidential Pardon or seek other legal remedies to prove their innocence or demonstrate rehabilitation.
- **Respite:** Respite involves reducing the severity or duration of punishment due to special circumstances, such as pregnancy or a mental condition.
- **Remission:** Remission pertains to altering the duration of the punishment without changing its nature, for instance, reducing a twenty-year rigorous imprisonment to ten years.

Principles laid down by the Supreme Court regarding the pardoning power of the President:

- The Supreme Court, in the landmark case of **Maru Ram vs. Union of India** has categorically held that the

President cannot exercise his personal discretion in this matter; rather, he functions on the aid and advice of Council of Ministers.

- The petitioner has no right to demand an oral hearing by the President.
- The pardoning power has to be exercised on the advice of the Union Cabinet.
- The President is not bound to provide any reasons for his decision.
- The President can examine the evidence of the case afresh and may make different interpretations than the court's judgement.
- The President can provide relief from an evident mistake or a sentence that he considers unduly harsh.
- This power does not come under the purview of judicial review unless the decision is irrational, arbitrary, mala fide or discriminatory.
- After rejection of an earlier petition for mercy, stay can not be obtained by filing another petition.

President's vs Governor's Pardoning Power

- Under **Article 161** of the Constitution, the Governor of a state also possesses the authority to grant pardons, reprieves, respites, and remissions of punishment or suspend, remit, and commute the sentence of an individual convicted of an offence against state law. However, there are two key distinctions in the governor's pardoning power as compared to that of the President:
- The President can pardon sentences imposed by court-martial (military courts), whereas the Governor does not possess this power.
- The President can grant clemency in cases of death sentences, while the Governor cannot. Even if a state law prescribes a death sentence, the authority to grant a pardon rests with the President, not the governor. Nevertheless, the Governor can suspend, remit, or commute a death sentence. In essence, both the Governor and the President hold concurrent powers concerning the suspension, remission, and commutation of death sentences.

Immunities to the President of India

The President, as the head of the state, enjoys specific immunities to ensure the unimpeded execution of duties. **Article 361** of the Indian Constitution outlines the immunities granted to the President, which include:

- **Not answerable to any Court:** The President is not subject to any court's jurisdiction regarding the exercise of powers, performance of duties, or acts carried out in the course of duty.
- **Review of Conduct by Parliament-Appointed Body:** The conduct of the President can be reviewed by either House of Parliament. However, the scrutiny is possible only if either House of Parliament designates a court, tribunal, or another body under **Article 61** to investigate charges against the President.
- **Immunity from Criminal Proceedings:** No criminal proceedings can be initiated or continued against the President during their term. Courts are prohibited from issuing arrest warrants or imprisoning the President.
- However, Civil cases related to personal acts can be instituted during the term. The President must be given a two-month prior notice, including details of the proceeding, cause of action, and information about the other party.
- These immunities collectively safeguard the President from legal interventions and prosecutions, fostering an environment conducive to the effective discharge of presidential responsibilities.

Constitutional Position of The President

In understanding the constitutional role of the President of India, specific reference must be made to the provisions of **Articles 53, 74, and 75** of the Constitution, which lay out the following principles:

- **Executive Power Vesting in the President: Article 53** states that the executive power of the Union shall be vested in the President and can be exercised by the President directly or through subordinate officers in accordance with the Constitution.
- **Aid and Advice of the Council of Ministers: Article 74** establishes the framework for the President's relationship with the Council of Ministers. It mandates that there shall be a council of ministers with the Prime Minister at its head, which is responsible for offering aid and advice to the President. Importantly, the President "shall" act in accordance with such advice while performing their functions.

The **42nd Constitutional Amendment Act of 1976** rendered the President bound by the advice of the council of ministers led by the Prime Minister. It effectively restricted the President's discretion in acting independently.

Subsequently, the **44th Constitutional Amendment Act of 1978,** introduced a provision allowing the President to request the council of ministers to reconsider their advice, whether in a general or specific context.

However, the President "shall" ultimately act in accordance with the advice tendered by the council of ministers following such reconsideration. In essence, the President is permitted to seek reconsideration of a matter once, but the final decision must align with the advice offered after the reconsideration.

Impeachment of President of USA vis-a-vis India

Impeachment is a formal process used in some political systems, particularly in democratic nations, to bring charges of wrongdoing or misconduct against a high-ranking public official, such as a President, Prime Minister, or other government officials.

Aspect	India President	US President
Grounds for impeachment	❑ Violation of the Constitution, but the Constitution does not define it.	❑ Treason, bribery, or other high crimes and misdemeanours
Initiating house	❑ Either Lok Sabha or Rajya Sabha	❑ House of Representatives
Required majority in initiating house	❑ Two-thirds of the total membership	❑ Simple majority
Notice period	❑ 14 days	❑ None
Investigating house	❑ The other house from the initiating house	❑ Senate
Required majority in investigating house	❑ Two-thirds of the total membership	❑ Two-thirds of the members present
Role of Vice President	❑ Does not participate in the impeachment process	❑ Presides over the Senate except when the President is impeached

Issues related to President of India

The position of the President of India, despite holding a paramount place in the Constitution, has been a consistent subject of criticism within the country, primarily due to the following reasons:

Titular Head:

- ❑ It is the Prime Minister who with his Council of Ministers makes decisions and subsequently informs the President, who is constitutionally obligated to act on the advice. (He can ask for reconsideration once)

Political Puppet or Rubber Stamp:

- ❑ The President has often been labelled as a rubber stamp of the government because they are required to approve all executive decisions.
- ❑ For instance, during the 1975 Emergency, President Fakhruddin Ali Ahmed swiftly granted approval to then Prime Minister Indira Gandhi's request to declare a National Emergency.
- ❑ However, it is vital to note that the President is not merely a rubber stamp. A President with a strong commitment to constitutional principles can make a difference. Under Article 78 of the Constitution, the President possesses the constitutional right to seek information from the Prime Minister.
- ❑ Eminent jurist **Professor M. P. Jain** emphasises that the President's influence depends on their personality, character, and abilities. A President with a strong moral compass can exert a significant influence on government affairs by offering valuable advice, knowledge, and experience for decisions impacting the well-being of the people.

Presidential Activism:

- ❑ Presidential activism occurs when the President asserts their discretionary powers and does not act strictly in accordance with the advice of the council of ministers. India has a history of activist Presidents.
- ❑ Examples include Rajendra Prasad's public criticism of the government and the absolute veto on the PEPSU bill in 1954. Other Presidents, such as K.R. Narayanan and A.P.J. Abdul Kalam, are also considered activist Presidents.
- ❑ While some constitutional scholars have defended Presidential activism, citing its role in preserving federalism and preventing the misuse of Article 356, from a legal standpoint, it is not seen as desirable in a parliamentary form of government.

Misuse of Pardoning Powers:

- ❑ Under Article 72 of the Constitution, the President of India holds the authority to grant pardons or reduce the sentences of convicted individuals, particularly in cases involving capital punishment.
- ❑ This power has been prone to misuse, as seen during the tenure of former President Pratibha Patil, who granted a record 30 pardons within 28 months, which amounted to 90% of all pardons ever issued by previous Presidents of India.

Choice of Presidential Candidate:

- ❑ Often, the selection of a Presidential candidate is influenced by political considerations, aiming to appease particular communities or sections of society. Moreover, the President is not directly elected by the people of India.

Use of the Office of President as a Reward:

- ❑ The office of the President is sometimes perceived as a reward for unwavering loyalty to a particular party.

As former President of India R. Venkatraman aptly described, "the President in India is like an emergency lamp which comes to power only when the main switch is off."

Some Facts related to Indian Presidents:

- Dr. Rajendra Prasad is the only President who had been re-elected as President of India and served for 2 consecutive terms.
- Fakhruddin Ali Ahmed was the President during whose rule National Emergency was declared.
- Neelam Sanjiva Reddy is the only President who was elected unopposed in Presidential elections.
- Ms. Pratibha Patil was the first woman President of India.

Despite these criticisms, the President of India fulfills several crucial roles, such as safeguarding the foundation of parliamentary democracy, addressing situations without a clear precedent (e.g., appointing a Prime Minister when no party holds a clear majority in the Lok Sabha or when a Prime Minister unexpectedly passes away), and acting as the custodian of the Constitution by preserving, defending, and protecting it.

List of all Presidents of India		
S.No.	**President**	**Term of Office**
1.	Dr. Rajendra Prasad	26 Jan 1950 – 13 May 1962
2.	Dr. Sarvepalli Radhakrishnan	13 May 1962 – 13 May 1967
3.	Dr. Zakir Hussain	13 May 1967 – 03 May 1969
4.	Varahagiri Venkata Giri	03 May 1969 – 20 Jul 1969
5.	Justice Mohammad Hidayatullah	20 Jul 1969 – 24 Aug 1969
6.	Varahagiri Venkata Giri	24 Aug 1969 – 24 Aug 1974
7.	Fakhruddin Ali Ahmed	24 Aug 1974 – 11 Feb 1977
8.	B.D. Jatti	11 Feb 1977 – 25 Jul 1977
9.	Neelam Sanjiva Reddy	25 Jul 1977 – 25 Jul 1982
10.	Giani Zail Singh	25 Jul 1982 – 25 Jul 1987
11.	R. Venkataraman	25 Jul 1987 – 25 Jul 1992
12.	Dr. Shankar Dayal Sharma	25 Jul 1992 – 25 Jul 1997
13.	K.R. Narayanan	25 Jul 1997 – 25 Jul 2002
14.	Dr. A.P.J. Abdul Kalam	25 Jul 2002 – 25 Jul 2007
15.	Ms. Pratibha Devisingh Patil	25 Jul 2007 – 25 Jul 2012
16.	Shri Pranab Mukherjee	25 Jul 2012 – 25 Jul 2017
17.	Shri Ram Nath Kovind	25 Jul 2017 – 21 Jul 2022
18.	Draupadi Murmu	21 Jul 2022 – Present

Important Articles Related President of India

Article No.	Subject-Matter
52	The President of India
53	Executive power of the Union
54	Election of President
55	Manner of election of President

Article No.	Subject-Matter
56	Term of office of President
57	Eligibility for re-election
58	Qualifications for election as President
59	Conditions of President's office
60	Oath or affirmation by the President
61	Procedure for impeachment of the President
62	Time of holding election to fill vacancy in the office of President
65	Vice-President to act as President or to discharge his functions
71	Matters relating to the election of President
72	Power of President to grant pardons, etc., and to suspend, remit, or commute sentences in certain cases
74	Council of ministers to aid and advise the President
75	Other provisions as to ministers like appointment, term, salaries, etc.
76	Attorney-General of India
77	Conduct of business of the Government of India
78	Duties of the Prime Minister in respect to furnishing of information to the President, etc.
85	Sessions of Parliament, prorogation and dissolution
111	Assent to bills passed by the Parliament
112	Union Budget (annual financial statement)
123	Power of President to promulgate ordinances
143	Power of President to consult Supreme Court

VICE PRESIDENT OF INDIA

- The office of the Vice President is the **Second highest office** in India after the post of President of India. The role of the Indian Vice President is based on the line of the American Vice-President's office.
- The role of the Vice President is largely ceremonial, with limited executive powers, and the primary function is to preside over the Rajya Sabha, the upper house of the Indian Parliament. **Article 63** of the Indian Constitution provides the provision that 'There shall be a Vice-President of India'.

History and Origin

- The office of the Vice President in India has a brief yet significant history that reflects the country's unique political structure. The office of Vice-President **came into being** with the adoption of the Constitution of India in **1950.** The need to set up this office was felt to ensure a smooth line of succession and remove a political leadership vacuum in the event of a vacancy in the President's office.
- **The first Vice President of India was Dr. Sarvepalli Radhakrishnan,** who served from 1952 to 1962. He was a distinguished philosopher and served as the President of India later.

Election Process of The Vice-President

- **Article 66:** The Vice President of India is elected indirectly by an electoral college consisting of the members of both Houses of Parliament, in accordance with the system of **proportional representation by means of the single transferable vote** and the voting in such election is by **secret ballot.**
- **Electoral College:** The electoral college for the election of the Vice President consists of all members **(both elected and nominated**) of the Lok Sabha (lower house) and the Rajya Sabha (upper house) of Parliament.
- This is in contrast to the election of the President as only elected members participate in the election process of the President. Also, the **members of state legislative assemblies do not participate** in the election of Vice-President while the elected members of state legislators are included in the election of the President.

Dispute related to the election of the Vice-President

- The Supreme Court is responsible for investigating and settling any uncertainties or disputes related to the Vice-President's election, and its decisions are conclusive. **It is not permissible to challenge the election of a Vice-President** based on the argument that the electoral college was not complete, meaning that there were vacancies among its members.
- If the Supreme Court determines that a person's election as Vice-President is void, any action undertaken by that individual before the Supreme Court's declaration remains valid and in effect.

Qualifications and Conditions for the post of Vice President of India

- **Article 66(3)** provides for the qualifications of a person to be elected as the Vice-President of India. Those are as follows-
  - A citizen of India.
  - The person has completed 35 years of age.
  - The person is qualified for elections as a member of the Rajya Sabha.
- Article 66 also makes it clear that a person is **ineligible** to get elected as the Vice-President of India if he/she is deemed to hold any **office of profit** under the Government of India or the government of any state or under any local or other authority subject to the control of any of the said government.
- Also, a person shall not be deemed to hold the office of profit if he occupies the office of the President or the Vice-President or the Governor of any state or a Minister of Union or any state.

IGNITE YOUR MIND

Consider the diverse cultural and linguistic landscape of India. How do you think can the Vice-President play a role in promoting national integration and understanding among different states and communities?

Additionally, to be nominated as a candidate for the Vice-President's office, it is mandatory for at least 20 electors to endorse the nomination as proposers, and another 20 electors to second the nomination. Furthermore, every candidate is required to place a security deposit of ₹15,000 in the Reserve Bank of India.

Term and Vacancy

Term of office for Vice President

Article 67 of the Constitution of India contains provisions for the term of office of the Vice-President. As per it, the **term of office is 5 years** from the date of entering into office for the Vice President. Vice President may, by writing under his hand addressed to the President, resign his office. Vice President shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office. Moreover, he is **eligible for re-election** and can **serve an unlimited number** of terms in the same position.

Removal

- He/she may be removed from his office by a resolution of the Council of States passed by a **majority of all the then members** of the council and agreed to by the House of the People.
- This implies that the resolution for removal should secure an **effective majority in the Rajya Sabha and a simple majority in the Lok Sabha.**
- **This resolution must originate in the Rajya Sabha** and not in the Lok Sabha.
- However, it cannot be introduced without providing a minimum of 14 days prior notice.
- The Constitution does not specify grounds for his removal.

Vacancy in the office of Vice President

- A **vacancy** in the position of Vice-President can arise through various means, including:
- Conclusion of his five-year term.
- Voluntary resignation.
- Removal from office.
- Death.
- Other circumstances, such as disqualification or the annulment of his election.

Election to fill Vacancy - Article 68

- An election to fill a vacancy caused by the expiration of the term of office of Vice President shall be completed before the expiration of the term.
- An election to fill a vacancy in the office of Vice President occurring by reason of his death, resignation, or removal, or otherwise shall be held **as soon as possible** after the occurrence of the vacancy.
- The person elected to fill the vacancy shall be entitled to hold office for the full term of five years from the date on which he enters upon his office.

There is no provision that the vacancy in the office of the Vice President should be filled within a period of 6 months, unlike the vacancy in the office of the President which must be filled within a period of 6 months.

Oath for the Office of Vice President of India

Article 69 of the Constitution provides for the **oath or affirmation** that a person has to subscribe before joining the office of Vice President. The said oath is administered by the President of India or some person appointed by him. In his oath, the Vice President swears:

- To bear true faith and allegiance to the Constitution of India; and
- To faithfully discharge the duties of his office.

Powers and Functions

The Vice-President's role can be categorised into two main functions:

- He serves as the **ex-officio Chairman of the Rajya Sabha,** with powers and responsibilities akin to those of the Lok Sabha Speaker. This role draws parallels with the American Vice President, who also acts as the Chair of the Senate, the upper house of the U.S. legislature.
- The Vice-President **assumes the duties of the President** when a vacancy arises due to reasons such as resignation, impeachment, death, or other causes. His tenure as acting President is **limited to a maximum of six months,** during which a new President must be elected.
- Additionally, if the President is temporarily unable to perform his duties due to factors like absence or illness, the Vice-President steps in until the President can resume his responsibilities.
- When the Vice-President fulfils the duties of the President, he doesn't perform his role of the Chairman of the Rajya Sabha. During this period, the Deputy Chairman of the Rajya Sabha takes on those responsibilities. Also, the Vice President is entitled to the salary and allowance of the President during this period. The Constitution has not fixed any emoluments for the Vice-President in that capacity.

Comparison Between Indian and American Vice-President

Feature	Indian Vice-President	US Vice-President
Role	Second-highest constitutional office in India.	Second-highest constitutional office in the United States.
Election	Indirectly elected by an electoral college consisting of all members of both houses of Parliament.	Elected on the same ticket as the President.
Term of office	Five years	Four years
Qualifications	Must be a citizen of India, must have completed the age of 35 years, and must be eligible for election to the Rajya Sabha.	Must be a natural born citizen of the United States, and must have reached the age of 35 years.
Powers and duties	Serves as the ex-officio Chairman of the Rajya Sabha (upper house of Parliament) and presides over its meetings. Can act as President for a maximum of 6 months if the office becomes vacant due to death, resignation, impeachment, or removal from office.	Serves as the ex-officio President of the Senate (upper house of Congress) and presides over its meetings. Can cast a tie-breaking vote in the Senate. Succeeds to the presidency, for the remaining term, upon the death, resignation, removal, or impeachment of the President.

List of all Vice Presidents of India	
Vice – President of India	**Term of office**
Sarvepalli Radhakrishnan (First Vice-President of India)	13 May 1952 – 12 May 1957 13 May 1957 – 12 May 1962
Zakir Hussain	13 May 1962 – 12 May 1967
V. V. Giri	13 May 1967 – 3 May 1969
Gopal Swarup Pathak	31 August 1969 – 30 August 1974
B. D. Jatti	31 August 1974 – 30 August 1979
Mohammad Hidayatullah	31 August 1979 – 30 August 1984
R. Venkataraman	31 August 1984 – 24 July 1987

❑ Dr. Shankar Dayal Sharma	3 September 1987 – 24 July 1992
❑ K. R. Narayanan	21 August 1992 – 24 July 1997
❑ Krishan Kant	21 August 1997 – 27 July 2002
❑ Bhairon Singh Shekhawat	19 August 2002 – 21 July 2007
❑ Mohammad Hamid Ansari	11 August 2007 – 11 August 2012 11 August 2012 – 11 August 2017
❑ Venkaiah Naidu	11 August 2017 – 11 August 2022
❑ Jagdeep Dhankhar	11 August 2022 – Incumbent

CONCLUSION

IGNITE YOUR MIND

Imagine a parallel universe where there is no position of Vice President in India. What do you think would the absence of this role impact the functioning of the Indian political system, and what challenges might arise?

- The President and Vice-President of India stand as pillars of the nation's constitutional framework, playing pivotal roles in upholding democratic principles and safeguarding the country's integrity. The President, as the head of state, embodies the nation's sovereignty and represents India on the global stage, while the Vice-President acts as a guiding force, ensuring the smooth functioning of the upper house of Parliament, the Rajya Sabha. Their combined influence shapes the nation's political landscape and fosters a harmonious governance system.

Union Executive-II

16

INTRODUCTION

The Prime Minister is the Head of the Government in India and occupies a position of paramount political influence in the country's parliamentary democracy. The establishment of the Indian Prime Minister's position mirrors the structure of the Prime Minister's role in Great Britain.

Parliamentary System Roles: President and Prime Minister

In the constitutional framework of a parliamentary system of government, there exists a clear distinction between the roles and authorities of the President and the Prime Minister. **The President** assumes the position of the **nominal executive** authority, known as the **de jure** executive, whereas the **Prime Minister** serves as the **real executive** authority, often referred to as the **de facto** executive. This distinction illustrates the President's role as the head of the State, while the Prime Minister fulfills the role of the head of the Government.

Difference between Nominal Executive and Real Executive

President (De Jure Executive)	Prime Minister (De Facto Executive)
❑ The President holds a ceremonial and symbolic role as the de jure executive. ❑ This position is primarily constitutional and represents the formal, legal aspects of the executive authority. ❑ The President's powers and functions are exercised in accordance with the advice and recommendations of the Prime Minister and the Council of Ministers. ❑ The President acts as a unifying and representative figure for the nation, performing ceremonial duties and constitutional functions.	❑ The Prime Minister is the de facto executive, holding substantial executive powers and responsibilities. ❑ As the head of the Government, the Prime Minister plays a pivotal role in the day-to-day governance and administration of the country. ❑ The Prime Minister is responsible for formulating policies, making decisions, and overseeing the functioning of the government. ❑ The Prime Minister's authority is derived from being the leader of the majority party or coalition in the Lok Sabha, the lower house of Parliament.

Appointment of The Prime Minister

Constitutional Provisions:

Article 75(1) of the Constitution stipulates that the President is responsible for appointing the Prime Minister. However, The Indian Constitution does not mention any specific procedures for the selection and appointment of the Prime Minister by the President.

❑ **Appointment Process:**

- The President is not free to appoint anyone as the Prime Minister but must adhere to the conventions of the parliamentary system.
- Normally, the leader of the majority party in the Lok Sabha (after the general elections) is called by the President and is appointed as the Prime Minister.
- However, **in cases of no clear majority**, the President can exercise personal discretion to appoint the leader of the largest party or coalition in the Lok Sabha as Prime Minister.
- The designated Prime Minister is then required to prove his majority in the Lok Sabha within a specified time.
- Discretionary Power in Prime Minister Selection:
- The President's discretionary power was **first exercised in 1979,** when Charan Singh was appointed as the Prime Minister by Neelam Sanjiva Reddy (the then President) after the fall of the Janata Party government.
- A similar situation arises when the incumbent Prime Minister dies suddenly without an obvious successor, as seen in the case of Indira Gandhi's assassination in 1984. However, if the ruling party elects a new leader after the death of an incumbent Prime Minister the President has no choice but to appoint him as Prime Minister.

❑ **Proving Majority:**

- In 1980, the **Delhi High Court ruled** that the Constitution does not require a person to prove their

majority in the Lok Sabha before being appointed as Prime Minister.

- The President may first appoint an individual as Prime Minister and subsequently ask them to demonstrate their majority within a reasonable period.
- In 1997, **the Supreme Court clarified** that a person who is not a member of either House of Parliament can serve as Prime Minister for a **maximum of six months**, within which they must become a member of either House of Parliament.

❑ **Membership:**

- The Constitution allows the Prime Minister to be a member of either of the two Houses of Parliament, the Lok Sabha or the Rajya Sabha.
- Notably, Prime Ministers **like Indira Gandhi (1966), Deve Gowda (1996), and Manmohan Singh (2004)** were members of the Rajya Sabha, while in the UK, the Prime Minister must be a member of the House of Commons.

Oath, Term and Salary of The Prime Minister

Prior to assuming office, the President administers oaths of office and secrecy to the Prime Minister. In the **oath of office,** the Prime Minister commits to:

- Bear true faith and allegiance to the Constitution of India.
- Safeguard and uphold the sovereignty and integrity of India.
- Faithfully and conscientiously execute the duties of the office.
- Act impartially and justly toward all citizens in accordance with the Constitution and the law, without bias, favor, affection, or ill will.
- In the oath of secrecy, the Prime Minister pledges not to directly or indirectly disclose or communicate any matters that come under their consideration or become known to him as Prime Minister, unless necessary for the proper execution of their ministerial duties.

❑ **Tenure and Dismissal:**

- The Prime Minister's **term is not fixed,** and he holds office during the pleasure of the President. However, this does not grant the President unrestricted authority to dismiss the Prime Minister at any time.
- As long as the Prime Minister enjoys the majority support in the Lok Sabha, the President cannot dismiss him. If the Prime Minister loses the confidence of the Lok Sabha, he must resign, or the President can dismiss him.

❑ **Salary and Allowances:**

- The salary and allowances of the Prime Minister are subject to **determination by the Parliament** and may change over time. The Prime Minister is entitled to the salary and allowances provided to a Member of Parliament.
- Additionally, they receive a sumptuary allowance, along with benefits like free accommodation, travel allowances, and medical facilities.

Powers and Functions of The Prime Minister

In Relation to the President:

❑ **Article 74:**

- Establishes a council of ministers led by the Prime Minister to aid and advise the President.
- States that the President must act in accordance with the advice provided by the council of ministers.
- Allows the President to request the Council of Ministers to reconsider their advice and mandates the President to act in accordance with the advice after reconsideration.

❑ **Article 75:**

- Grants the President the authority to appoint the Prime Minister, while other ministers are appointed by the President on the advice of the Prime Minister.
- States that ministers serve at the pleasure of the President.
- Establishes the collective responsibility of the council of ministers to the House of the People (Lok Sabha).

❑ **Article 78:**

- Outlines the duties of the Prime Minister, which include:
  - ❒ Communicating to the President all decisions of the council of ministers related to the administration of Union affairs and proposals for legislation.
  - ❒ Providing information regarding the administration of Union affairs and legislative proposals when requested by the President.
  - ❒ Submitting, if required by the President, any matter to the council of ministers for consideration, particularly when a decision has been made by a minister but not yet reviewed by the council.
- **Advice on Appointments:** The Prime Minister advises the President on significant appointments, such as the Attorney General of India, Comptroller and Auditor General of India, members of various commissions, and more.

In Relation to the Council of Ministers:

❑ **Recommendation of Ministers:** The Prime Minister has the authority to recommend individuals for appointment as ministers to the President. The

President can only appoint those individuals who are recommended by the Prime Minister.

- **Allocation and Reshuffling of Portfolios:** The Prime Minister has the responsibility of allocating and rearranging various portfolios among the ministers.
- **Dismissal of Ministers:** In cases of differences of opinion, the Prime Minister can request a minister to resign or advise the President to dismiss them.
- **Presiding over Council Meetings: The Prime Minister** presides over the meetings of the Council of **Ministers** and influences its decisions.
- **Guidance and Coordination:** The Prime Minister guides, directs, controls, and coordinates the activities of all the ministers.
- **Power to Resign:** The Prime Minister can bring about the collapse of the council of ministers by resigning from office. The resignation or death of the Prime Minister dissolves the entire council of ministers.
- **In Relation to Parliament:**
  - The Prime Minister serves as the leader of the Lower House of Parliament, the Lok Sabha.
  - Advising the President on summoning and proroguing Parliament sessions.
  - Recommending the dissolution of the Lok Sabha to the President at any time.
  - Announcing government policies on the floor of the House.
  - Advises the President in regards to the nomination of members in Rajya Sabha.

Other Powers & Functions

- **Chairmanship of Various Bodies**: The Prime Minister holds the position of the chairman in various important bodies, including NITI Aayog, National Integration Council, Inter-State Council, National Water Resources Council, and others.
- **Foreign Policy Role**: The Prime Minister plays a significant role in shaping the foreign policy of the country. In fact, foreign policy decisions are largely decided by the Prime Minister.
- **Chief Spokesman**: The Prime Minister serves as the chief spokesman of the Union government.
- **Crisis Management**: In times of emergencies, the Prime Minister acts as the crisis manager-in-chief at the political level.
- **Leader of the Nation:** As the leader of the nation, the Prime Minister meets with various sections of the population in different states, receives memoranda about their issues, and more.
- **Head of Cabinet Committees:** The PM sets up Cabinet Committees, which are headed by him when he is a member. PM is the head of the Cabinet Committee on Political Affairs, Cabinet Committee on Economic Affairs and Cabinet Committee on Appointments.

Hence, the Prime Minister's role is pivotal in the political administrative system of the country. As noted by **Dr. B.R. Ambedkar- "The Prime Minister can be compared to the U.S. President in terms of functionary significance, surpassing the President of the Union."**

IGNITE YOUR MIND

In what ways do the Prime Minister, Chief Minister, and District Magistrate balance national, state, and local interests in their decision-making processes? Can you think of any situations where these interests might conflict?

Description of The Role of Prime Minister by Various Scholars

- Various perspectives from notable figures shed light on the role of the Prime Minister in the British parliamentary system.
- **Sir William Vernor Harcourt** depicted the Prime Minister as **'inter stellas luna minores**,' drawing a metaphor of a moon among lesser stars.
- **Ivor Jennings** viewed the Prime Minister as a 'sun around which planets revolve,' underscoring their pivotal role in the constitution.
- **Lord Morley** characterized the Prime Minister as **'primus inter pares'** and the **'keystone of the cabinet arch,'** emphasizing their exceptional authority. Herbert Marrison acknowledged the Prime Minister as 'primus inter pares' but suggested a need for a more robust appreciation of their position.
- Observers like **R.H. Crossman** noted the transformation of cabinet government into Prime Ministerial government, while **Humphrey Berkely** pointed out the super-ministerial powers of the Prime Minister, suggesting a collapse of parliamentary democracy at Westminster. This description resonates in the Indian context as well.

About the Prime Minister's Office (PMO)

- In India, the Prime Minister's Office (PMO) functions as the administrative entity that supports the Prime Minister in the management of the Government of India and the execution of constitutional, executive, and administrative responsibilities.
  - The PMO is tasked with coordinating the operations of various departments and ministries within the Government of India and offering counsel to the Prime Minister on a diverse array of policy and administrative matters.

- **The head of the PMO is the Principal Secretary** to the Prime Minister, leading a team of other senior officials who aid the Prime Minister in the fulfillment of his/her duties.
- Several departments and organizations fall under the jurisdiction of the PMO, including:
- Department of Atomic Energy (DAE)
- Department of Space (DoS)
- National Security Council (NSC)

Should the PM be chosen from the Lok Sabha only?

- It is advocated that the leader of the Council of Ministers (CoM) should be a member of the Lower House (Lok Sabha), to which the CoM is collectively accountable. The primary role of the Rajya Sabha is not to form the government but to ensure representation for states and safeguard their interests. This convention is supported by examples from other parliamentary democracies. For instance:
- In Britain, the Prime Minister emerges from the House of Commons (Lower House).
- In Germany, the federal chancellor is drawn from the lower house (Bundestag).
- The Japanese Prime Minister comes from the lower house, known as the Diet.
- Jawaharlal Nehru endorsed and supported this principle. V. Kamath introduced a Constitutional Amendment Bill in 1966 to formalise this provision, but it did not pass. While the Government broadly agreed with the idea, it asserted that it should develop as a convention rather than a statute.

Prime Ministerial Funds

The Prime Minister oversees various funds that serve distinct purposes.

Prime Minister's National Relief Fund (PMNRF)

- Established in 1948 by India's first Prime Minister, Jawaharlal Nehru, the PMNRF initially assisted displaced people from Pakistan. Today, its primary focus is on aiding families affected by natural disasters, such as earthquakes, cyclones, and floods. Additionally, it provides secondary support for reimbursing medical expenses related to chronic and deadly diseases. Donations to the PMNRF are 100% tax-deductible under Section 80G of the Income Tax Act, 1961.

National Defence Fund

- This fund was established by the Indian government in 1962 in the aftermath of the 1962 Sino-Indian War. The Fund is chaired by the Prime Minister. The fund's executive committee includes the ministers of defence, finance, and home, with the finance minister also serving as the treasurer.
- A joint secretary in the Prime Minister's Office, specializing in NDF matters, acts as the secretary. The fund relies entirely on voluntary contributions from the public, without any budgetary support. Contributions to the NDF are 100% tax-deductible under Section 80G of the Income Tax Act, 1961.

Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM Cares Fund)

- In response to the rapid global spread of the COVID-19 virus in March 2020, Prime Minister Narendra Modi announced the creation of the PM Cares Fund. This is a fully voluntary fund, without government budgetary support and was designed to address various emergency and distress situations, including the COVID-19 pandemic.

The Post of Deputy Prime Minister of India

- The position of Deputy Prime Minister in India lacks formal constitutional status and is not explicitly mentioned in any article of the Constitution or parliamentary legislation. Throughout the history, different governments have informally designated a senior minister as the Deputy Prime Minister.
- The Deputy Prime Minister assumes the responsibilities of representing the government in the Prime Minister's absence. Generally, the appointment of Deputy Prime Ministers aims to strengthen coalition governments. Vallabhbhai Patel, who also served as the Home Minister in Jawaharlal Nehru's cabinet, was the first holder of this position.

Serial No.	Name of the Deputy Prime Minister	Tenure
1	Sardar Patel	1947–1950
2	Morarji Desai	1967–1969
3	Charan Singh and Jagjivan Ram (jointly)	1979–1979
4	Y. B. Chavan	1979–1980
5	Devi Lal	1989–1990
6	Devi Lal	1990–1991
7	LK. Advani	2002–2004

Some facts about Prime Ministers of India

Fact	Prime Minister
The Longest-Serving Indian Prime Minister of India	**Jawaharlal Nehru (1947 – 1964)**
The Second Longest-Serving Indian Prime Minister of India	Indira Gandhi
First Non-Congress Prime Minister of India	Morarji Desai
Indian Prime Minister who received Pakistan's highest civilian award	Morarji Desai
Youngest Indian Prime Minister	Rajiv Gandhi
First Prime Minister from South India	P.V. Narasimha Rao
First Prime Minister of India who was a member of the Rajya Sabha	Indira Gandhi
Twice Acting Prime Minister	Gulzari Lal Nanda

Chief Ministers who later became Prime Ministers

Chief Minister	State	Became Prime Minister
Morarji Desai	Bombay (1952–56)	March 1977 (First non-Congress PM)
Charan Singh	Uttar Pradesh (1967–68, 1970)	July 1979
V.P. Singh	Uttar Pradesh (1980-82)	December 1989 (National Front government)
P.V. Narasimha Rao	Andhra Pradesh (1971–73)	June 1991
H.D. Deve Gowda	Karnataka (1994)	June 1996 (United Front government)
Narendra Modi (BJP)	Gujarat (2001–2014)	May 2014

Prime Ministers of India

S. No.	Name of the Prime Minister	Tenure
1	Pandit Jawaharlal Nehru	15th Aug 1947- 27th May 1964
2	Gulzarilal Nanda (interim)	27th May 1964- 9th June 1964 (13 days)
3	Lal Bahadur Shastri	9th June 1964 -11th January 1966
4	Gulzarilal Nanda	11th January 1966- 24th January 1966 (13 days)
5	Indira Gandhi	24th January 1966- 24th March 1977
6	Morarji Desai	24th March 1977- 28th July 1979
7	Charan Singh	28th July 1979- 14th January 1980
8	Indira Gandhi	14th January 1980- 31st October 1984
9	Rajiv Gandhi	31st October 1984- 2nd December 1989
10	Vishwanath Pratap Singh	2nd December 1989- 10th November 1990
11	Chandra Shekhar	10th November 1990-21st June 1991
12	P.V. Narasimha Rao	21st June 1991- 16th May 1996
13	Atal Bihari Vajpayee	16th May 1996-1st June 1996
14	H.D. Deve Gowda	1st June 1996- 21st April 1997
15	Inder Kumar Gujral	21st April 1997- 19th March 1998
16	Atal Bihari Vajpayee	19th March 1998- 22nd May 2004
17	Dr. Manmohan Singh	22nd May 2004 -26th May 2014
18	Narendra Modi	26th May 2014 - till present

Council of Minister

- The Indian Constitution follows a Parliamentary System of government **similar to the British model,** where the actual executive authority lies with the Council of Ministers (CoMs) led by the Prime Minister. The context of the **Parliamentary Form of Government** is not well elaborated in the constitution.
- However, the Constitution broadly outlines the principles of this system in **Articles 74 and 75,** detailing the council's status and ministerial aspects like appointment, tenure, responsibilities, qualifications, oaths, and remuneration.

Constitutional Provisions Regarding CoM

- **Article 74**
  - **Article 74** of the Constitution specifies the establishment of a Council of Ministers, led by the Prime Minister, to assist and provide advice to the President, who shall follow their advice in performing his duties.
  - The President can ask the Council to reconsider, and subsequent action aligns with the reexamined advice.
  - Also, courts are not authorized to inquire about the advice given by Ministers to the President.
- **Article 75**
  - The **President appoints the Prime Minister,** and other ministers are appointed by the President based on the Prime Minister's advice.
  - The total number of ministers, including the Prime Minister, in the Council of Ministers should not exceed **15% of the total Lok Sabha** strength, and the members disqualified for defection are ineligible to be appointed as ministers (as per **the 91st Amendment Act** of 2003).
  - Ministers serve at the **pleasure of the President**.
  - The Council of Ministers is **collectively responsible to the Lok Sabha.**
  - The President administers **oaths of office and secrecy to ministers.**
  - A minister, who is not a member of the Parliament, ceases to be a minister if he is not a member of any of the two Houses for six consecutive months.
  - Parliament determines the salaries and allowances of ministers.
- **Article 77 (Conduct of Business of the Government of India)**
  - All government executive actions must be explicitly taken in the name of the President.
  - Orders and instruments executed in the President's name must follow specified authentication rules, and their validity cannot be contested on the grounds of not being made by the President.
  - The **President is responsible for creating rules for the transaction of government** business and allocate responsibilities among Ministers.
- **Article 88 (Rights of Ministers)**
  - **Article 88** grants ministers the privilege to speak and participate in the proceedings of either House, joint sittings or parliamentary committees they are part of.
  - However, they are **not eligible to cast votes**.

IGNITE YOUR MIND

Imagine that the coordination between the Prime Minister and Cabinet is like conducting a symphony orchestra. How do you think various ministries and policies can harmonize and create a balanced and effective policy symphony for the nation?

Nature of Advice by Ministers

- **Article 74** establishes a Council of Ministers with the Prime Minister to assist the President in their functions.
- The **42nd and 44th Constitutional Amendment Acts** made the advice of the Council **binding** on the President.
- Courts **cannot inquire into the nature of advice** given by ministers to the President, emphasizing the confidential relationship.
- In U.N.R. Rao case (1971), the Supreme Court ruled that even after **Lok Sabha's dissolution**, the Council of Ministers continues to hold office because the constitution does not provide for President to act without the aid and advice of the Council of Ministers.
- In 1974, the **Supreme Court clarified** that the President's satisfaction, as required by the Constitution, is the satisfaction of the Council of Ministers, whose aid and advice the President relies on for exercising his powers and functions.

Appointment of Ministers

- The President appoints the Prime Minister, and other ministers based on the Prime Minister's recommendation.
- Ministers are typically members of either the Lok Sabha or Rajya Sabha, but **non-members can also be appointed**, provided they become a member within six months of the appointment.
- If a minister, not initially a parliamentary member, fails to join either House within six months, they lose their ministerial position.

- A minister who is a member of one House has the right to participate in the proceedings of the other House but can only vote in their respective House.

Oath of Ministers

- Before assuming office, a minister takes oaths administered by the President. In the oath of office, the minister pledges:
  - To bear true faith and allegiance to the Constitution of India.
  - To uphold India's sovereignty and integrity.
  - Faithful and conscientious discharge of official duties.
  - Impartial treatment of all in accordance with the Constitution and the law, without fear or favour, affection or ill will.

In the oath of secrecy, the minister vows not to disclose any information brought to their attention as a Union minister unless necessary for fulfilling their duties.

Note:

- There was an instance in 1990 when the validity of Devi Lal's oath as Deputy Prime Minister was questioned, arguing that the Constitution only accounts for the Prime Minister and ministers.
- The Supreme Court held the oath valid, clarifying that the title "Deputy Prime Minister" is merely descriptive and doesn't grant additional Prime Ministerial powers. The court asserted that using titles like Deputy Prime Minister, Minister of State, or Deputy Minister, absent in the Constitution, doesn't invalidate the oath, as long as the essential commitments of the oath are maintained.

Salary of the Ministers

The Parliament of India determines the salaries of ministers. Ministers receive their salaries and allowances aligned with those of a Member of Parliament. Additionally, **ministers are entitled to a sumptuary allowance** based on their position, complimentary accommodation, travel allowances, and medical benefits.

Accountability of Ministers

- **Principle of Collective Responsibility**
  - The parliamentary system operates on the fundamental principle of collective responsibility, as outlined in **Article 75. However, nowhere in the Constitution, the word collective responsibility is mentioned.** This principle dictates that the **Council of Ministers is collectively accountable to the Lok Sabha,** meaning all ministers share joint responsibility for their actions.
  - They function as a unified team, and if the Lok Sabha passes a vote of no confidence, all ministers, including those from the Rajya Sabha, must resign. Alternatively, the Council can recommend the dissolution of the Lok Sabha to the President, citing a lack of faithful representation of the electorate's views, leading to fresh elections. **Ministers are bound by collective responsibility even if they disagree in Cabinet meetings.**
  - Each minister is obligated to support and defend Cabinet decisions both inside and outside Parliament. Any minister dissenting from a decision must resign. **For example,** Dr. B.R. Ambedkar, C.D. Deshmukh, and Arif Mohammed resigned due to differences in specific legislative matters.
- **Principle of Individual Responsibility**
  - **Article 75** introduces the concept of individual responsibility, indicating that ministers serve at the President's pleasure. This implies that the President can dismiss a minister, even when the council of ministers has the Lok Sabha's confidence. However, **the President acts on the Prime Minister's advice while removing a minister.**
  - In cases of disagreement or dissatisfaction, the Prime Minister can request a minister's resignation or advise the President to dismiss them. This authority allows the Prime Minister to uphold collective responsibility. Dr. B.R. Ambedkar emphasized the necessity of creating and empowering the office of the Prime Minister to nominate and dismiss ministers to achieve true collective responsibility.
- **Absence of Legal Responsibility**
  - In **the United Kingdom**, every public act ordered by the King necessitates a minister's **countersignature**. If such an order violates any law, the minister is accountable and may face legal consequences. The accepted notion in Britain is that **"The king can do no wrong,"** exempting the king from legal actions.
  - **In contrast, India lacks constitutional provisions for the legal responsibility of a minister.** There is no requirement for a minister's countersignature on a President's order for a public act. Additionally, the courts are prohibited from scrutinising the advice provided by ministers to the President.

Composition of Council of Ministers

The Council of Ministers is composed of **three categories: Cabinet Ministers, Ministers of State and Deputy Ministers,** differing in rank, emoluments, and political significance.

At the pinnacle is the Prime Minister, the highest governing authority.

- **Cabinet ministers** lead crucial Central government ministries such as home, defence, finance, and external affairs. As cabinet members, they contribute to policy decisions, holding responsibilities across the entire spectrum of the Central government.
- **Ministers of State** may independently oversee ministries or be affiliated with cabinet ministers. When attached, they handle specific departments or tasks under cabinet ministers' supervision. If independently charged, they wield similar powers and functions as cabinet ministers within their ministries. A minister of state can attend cabinet meetings only on invitation. In any case, they work under the supervision and under the overall charge and responsibility of the cabinet ministers.
- **Deputy ministers,** of lower rank, lack independent charge of ministries. They support cabinet ministers or ministers of state in administrative, political, and parliamentary duties. Not participating in cabinet meetings, they are not cabinet members but assist with the guidance of higher-ranking ministers.

Cabinet vs Council of Ministers

Often the two terms- the Cabinet and the Council of Ministers- are used interchangeably. But, in reality, both have different meanings based on their strengths, roles, and compositions among other factors. The key differences between both of them are as follows:

Basis	Council of Ministers	Cabinet
Strength	Composed of 60-70 members and hence, a bigger body	Only 15-20 members are there in the Cabinet
Composition	3 types of ministers- Cabinet Ministers, Ministers of State, and Deputy Ministers are included	It is an inner part of the Council of Ministers. It includes only cabinet ministers.
Role	It generally does not meet as a collective body, hence no collective functions.	It often gathers to take note of important developments and thereby, make significant decisions regarding the transaction of government business.
Power	It has a range of power but only on paper.	It has more powers in reality and makes important decisions on the part of the Council of Ministers.
Interrelatedness	It puts into effect the decisions taken by the Cabinet.	It oversees the decisions implemented by the council.
Constitutional Status	It has a mention in the constitution, hence a constitutional body. Article 74 and Article 75 deal with its elaborative roles. The Salaries and Allowances Act of 1952 contains a definition of the word 'Minister' as the one who is a member of the council of ministers, by whatever name called, and includes a deputy minister.	It was **not originally mentioned** in the Indian Constitution. By the 44th Constitutional Amendment of 1978, Article 352 was amended to include it. As per it, the Cabinet is the council consisting of the Prime Minister and other ministers of the cabinet rank appointed under Article 75.
Responsibility to the Lok Sabha	Collectively responsible to Lok Sabha as a body.	Collectively responsible to Lok Sabha as a body along with the other ministers in the Council.

Description of The Role of Council of Ministers by Various Scholars

The role of the Cabinet in India echoes the sentiments expressed by renowned political scientists and constitutional experts. Various analogies emphasize the significance of the Cabinet in steering the course of the state.

- **Ramsay Muir** likened it to the "steering wheel of the ship of the state," while **Lowell** portrayed it as the **"keystone of the political arch."**
- **Sir John Marriott** saw the Cabinet as the "pivot around which the entire political machinery revolves," and **Gladstone** described it as the "solar orb around which other bodies revolve."
- According to **Barker,** the Cabinet acts as the "magnet of policy," and **Bagehot** characterized it as a "hyphen that joins, the buckle that binds the executive and legislative departments together."

- **L.S. Amery** stated that the Cabinet serves as the "central directing instrument of Government."

In the British context, **Ramsay Muir** went so far as to label it the 'Dictatorship of the Cabinet'. When in the majority, the Cabinet's position is likened to a dictatorship, albeit one qualified by publicity. This characterization, asserting a powerful but not always fully utilized omnipotence, holds true in the Indian context as well.

Concept of Kitchen Cabinet

- The cabinet, led by the Prime Minister and comprising around 15 to 20 key ministers, serves as the primary formal decision-making body. However, a more exclusive group known as the **'Inner Cabinet' or 'Kitchen Cabinet' has evolved** as the actual center of power. This informal assembly includes the Prime Minister and two to four trusted colleagues, both cabinet ministers and outsiders like friends and family.
- The Inner Cabinet **advises on significant political and administrative matters,** aiding the Prime Minister in crucial decision-making. Throughout India's history, each Prime Minister has maintained their Inner Cabinet, notably powerful during Indira Gandhi's era.
- The utilization of the 'Inner Cabinet' as an extra-constitutional body is attributed to its **advantages,** such as enhanced efficiency in decision-making due to its smaller size, more frequent and expedient meetings, and aiding in maintaining secrecy on critical political decisions. However, **drawbacks** include diminishing the authority of the formal cabinet and bypassing the legal process by involving external individuals in government functioning.
- This concept of a 'Kitchen Cabinet,' where decisions are formulated before formal cabinet approval, is not exclusive to India; it exists in the USA and Britain, exerting considerable influence on government decisions there as well.

Cabinet Committees

In India, Cabinet Committees are smaller groups of ministers formed by the Prime Minister from the larger Council of Ministers to address specific policy issues and make decisions on behalf of the government. These committees play a crucial role in ensuring **effective decision-making, coordination, and implementation of policies** across different sectors.

Features of Various Cabinet Committees

- **Established by the Prime Minister:** The Prime Minister establishes Cabinet Committees based on the current needs and demands of the situation, leading to variations in their number, names, and composition over time.
- **Constitutional Status:** Cabinet Committees emerge outside the constitutional framework, not explicitly mentioned in the Constitution. Their establishment, however, is provided for in the Rules of Business.
- **Organizational Purpose:** Cabinet Committees function as organizational tools to alleviate the extensive workload of the Cabinet. They enable in-depth examination of policy matters and promote effective coordination, aligning with the principles of division of labor and efficient delegation.
- **Types of Committees:** Cabinet Committees fall into two categories: standing and ad hoc. Standing committees are permanent, while ad hoc committees are temporary and form as needed, disbanding upon completing specific tasks.
- **Membership Composition:** Membership typically ranges from three to eight members, primarily comprising Cabinet Ministers. **Non-Cabinet Ministers are not excluded** from participation.
- **Inclusive Representation:** Cabinet Committees include not only Ministers responsible for relevant subjects but also other senior Ministers.
- **Leadership Dynamics:** While predominantly chaired by the Prime Minister, other Cabinet Ministers, such as the Home Minister or Finance Minister, may act as Chairman. If the Prime Minister is a member, he presides over the committee.
- **Decision-Making Authority:** Cabinet Committees not only address issues and propose considerations to the Cabinet but also possess decision-making authority. However, the Cabinet retains the power to review their decisions.

List of Cabinet Committees

- Cabinet Committee on Political Affairs.
- Cabinet Committee on Economic Affairs.
- Appointments Committee of the Cabinet.
- Cabinet Committee on Security.
- Cabinet Committee on Parliamentary Affairs.
- Cabinet Committee on Accommodation.

- Cabinet Committee on Investment and Growth.
- Cabinet Committee on Employment and Skill Development.

IGNITE YOUR MIND

In a constitutional democracy like India, how does the role of the Prime Minister serve as a crucial link between the executive and the legislature? Can you think of any such instances where this linkage has played a pivotal role?

Functions of various Cabinet Committees

- **Cabinet Committee on Political Affairs (headed by PM):**
  - Addresses issues related to Centre-state relations.
  - Examines political matters requiring a broader perspective but lacking internal or external security implications.
- **Cabinet Committee on Economic Affairs (headed by PM):**
  - Reviews economic trends and problems, shaping a consistent and integrated economic policy.
  - Coordinates activities requiring high-level policy decisions.
  - Deals with pricing of agricultural produce, essential commodities, investment proposals exceeding Rs 1,000 crore, industrial licensing policies, rural development, and the Public Distribution System.
- **Appointments Committee of the Cabinet (headed by PM):**
  - Makes appointments to top military positions, chiefs of Air and Army Commands, and key defence-related positions.
  - Decides on important empanelments and shifts of officers on Central deputation.
- **Cabinet Committee on Security:**
  - Addresses law and order, internal security, and policy matters in foreign affairs with security implications.
  - Considers capital defense expenditure exceeding Rs 1,000 crore.
  - Reviews issues related to the Department of Defence Production, Department of Defence Research and Development, and procurement of security-related equipment.
- **Cabinet Committee on Parliamentary Affairs:**
  - Formulates Parliament session schedules.
  - Monitors government business progress, scrutinizes non-government business, and decides on official Bills and resolutions.
- **Cabinet Committee on Accommodation:**
  - Determines guidelines for government accommodation allotment.
  - Decides on allotment to non-eligible persons, rent charges, and allocation from the General Pool to Members of Parliament.
  - Considers proposals for relocating Central Government Offices.
- **Cabinet Committee on Investment and Growth:**
  - Identifies key projects for time-bound implementation involving investments of Rs. 1,000 crore or more.
  - Prescribes time limits for approvals and clearances, monitoring project progress.
- **Cabinet Committee on Employment and Skill Development:**
  - Directs policies, programs, and initiatives for skill development to enhance workforce employability.
  - Works towards closing gaps between skill availability and sector requirements.
  - Sets targets for speedy implementation and periodically reviews progress.

All Cabinet Committees, except Accommodation and Parliamentary Affairs, are headed by the Prime Minister. The Cabinet Committee on Accommodation is led by the Home Minister and the Cabinet Committee on Parliamentary Affairs is headed by the Defence Minister. The Political Affairs Committee is considered the most powerful among the Cabinet Committees, often called a **Super-Cabinet.**

Advantages of Cabinet Committees:

- **Policy Examination and Coordination:** Facilitates a thorough examination of policy issues and enhances coordination for more informed decision-making.
- **Division of Labor:** Operates on the principle of division of labor, ensuring the efficient utilization of human resources with specialized expertise.
- **Safeguarding Collective Responsibility:** Plays a crucial role in safeguarding the principle of collective responsibility, ensuring decisions are collectively owned by the Cabinet.
- **Utilization of Ministerial Expertise:** Facilitates the utilization of ministerial expertise by providing a platform for focused discussions and decision-making.
- **Time Efficiency:** Economises the valuable time of the Cabinet by handling specific issues in a focused manner.
- **Enhanced Coordination:** Promotes inter-governmental and inter-departmental coordination, ensuring a cohesive approach to complex matters.
- **Effective Deliberation:** Allows for more effective deliberation due to the smaller size of the committees, fostering in-depth discussions.

- **Checks Arbitrary Actions:** Acts as a check on arbitrary actions by ministers, ensuring decisions are well-considered and collectively agreed upon.
- **Workload Reduction:** Established to alleviate the workload of Cabinet Ministers, allowing them to concentrate on critical matters.

Critique of Cabinet Committees:

- **Trivial Issue Establishment:** Occasionally, they are instituted to address trivial issues, raising concerns about the allocation of resources and attention.
- **Under-representation of Junior Ministers:** Junior ministers are seldom appointed to these committees, limiting the diversity of perspectives and expertise.
- **Irregular Meeting Schedule:** Meetings are not consistently held, potentially hindering timely decision-making and action on critical matters.
- **Political Considerations in Memberships:** Memberships often depend more on political considerations than merit, potentially compromising the effectiveness of the committees.
- **Over Reliance on Prime Minister's Involvement:** Excessive involvement of the Prime Minister in every Cabinet Committee may raise concerns about the distribution of decision-making responsibilities and potential bottlenecks.

IGNITE YOUR MIND

What comes to your mind when you think of Cabinet Committees? Can you name some of them? Let's suppose the Cabinet Committees are pieces on a chessboard, each representing a strategic move in governance. How would you strategize the placement and movement of these "pieces" to ensure effective decision-making?

Group of Ministers

"Group of Ministers" (GoM) in India refers to a **temporary and ad-hoc committee of ministers** formed by the Cabinet for the purpose of **examining specific issues** or policies that require in-depth analysis and consideration. The Group of Ministers is tasked with studying and providing recommendations on the particular matter assigned to them.

Group of Ministers (GoMs) has emerged as a practical and efficient tool for fostering coordination among ministries. These bodies are established to provide recommendations to the cabinet on urgent matters and critical problem areas. Ministers in charge of the relevant ministries are appointed to the respective GoMs, and once their advice is formalised, the groups are dissolved.

Features of Group of Ministers

- **Task-Specific Formation:** GoMs are established to address a particular task or national issue that necessitates collaborative decision-making involving multiple ministries.
- **Temporary Nature:** These are temporary entities that disband upon the completion of their assigned task.
- **Variable Membership:** The number of members in a GoM may vary, depending on the nature of the issue and the involvement required from different ministries.
- **Leadership by Cabinet Minister:** Typically, a senior cabinet minister, possessing expertise in the relevant subject, chairs GoMs.
- **Implementation of Decisions:** Decisions made by GoMs are generally implemented by the concerned ministries and departments.
- **Formation Basis:** The establishment of a GoM is typically based on recommendations from the concerned minister or department or at the direction of the Prime Minister.
- **Accountability to Prime Minister and Cabinet:** GoMs are accountable to the Prime Minister and the Cabinet for their actions.
- **Periodic Reporting:** GoMs may be required to provide regular reports on the progress of their work to the Cabinet or the Prime Minister.

Functions of Group of Ministers

- **Policy Analysis and Recommendations:** Analyzing and offering recommendations on specific policy issues that demand inter-ministerial coordination and decision-making.
- **Resolution of Inter-Ministerial Conflicts:** Resolving conflicts between different ministries or departments regarding significant policy matters and proposing solutions for their resolution.
- **Examination of Security and Defense Issues:** Examining and suggesting approaches to address matters related to law and order, internal security, and national defense.
- **Performance, Evaluation and Recommendations:** Reviewing and assessing the performance of various government programs and policies and recommending changes or enhancements as necessary.
- **Expert Advice on Specialized Issues:** Providing expert advice and guidance on specific issues and challenges that demand in-depth knowledge and expertise.

2nd Administrative Reforms Commission Recommendations related to GoMs

The Second Administrative Reforms Commission (2005–2009) offered observations and suggestions regarding the functioning of GoMs:

- The Commission noted that the formation of a large number of GoMs has resulted in many being unable to convene regularly, causing substantial delays in addressing crucial issues.
- The Commission suggested that a more judicious use of GoMs might enhance coordination, especially if they are granted the authority to make decisions on behalf of the Cabinet within prescribed time limits for completing their assigned tasks.
- The Commission recommended the need to ensure the effective functioning of the existing coordination mechanism of GoMs, emphasizing the importance of selective but impactful use of GoMs with a clear mandate and specified time limits to aid in the timely resolution of issues.

Extent of Executive Power of The Union

- **Article 73** of the Constitution of India delineates the extent of the executive power vested in the Union. According to **Article 73(1),** the executive power of the Union extends to:
  - Matters falling within the legislative competence of Parliament as specified in the Union List of the Seventh Schedule.
  - The exercise of rights, authority, and jurisdiction by the Government of India as per any treaty or agreement.
- It is noteworthy that the executive power mentioned in the first sub-clause **does not extend to any matters over which the State Legislature possesses the authority to legislate**, except as expressly provided in the Constitution or any law enacted by Parliament.
- Additionally, as per **Article 73(2)**, until Parliament determines, a State and its officers retain the ability to exercise executive power or functions in areas within the legislative purview of Parliament, which the State or its entities could perform immediately before the commencement of the Constitution.

Conclusion

The Prime Minister and his ministers play a pivotal role in shaping India's political landscape and influencing its trajectory. Understanding the dynamics of their relationship and their collective impact on governance is crucial for comprehending India's political system and its effectiveness in addressing the nation's challenges. This collaborative effort is essential for effective governance, requiring seamless communication and coordination.

ATTORNEY GENERAL OF INDIA

The Attorney General of India is the chief legal advisor and the primary lawyer representing the Government of India. The role of the Attorney General is defined in the Constitution of India under **Article 76.**

Appointment (Article 76(1))

The President shall appoint a person who is qualified to be appointed a Judge of the Supreme Court to be Attorney-General for India. Specifically, the appointee must:

- be an Indian citizen and
- Have served as a judge in a high court for a minimum of five years, or
- Have practiced as an advocate in a high court for at least ten years, or
- Be recognized as an eminent jurist according to the President's judgment.

About the Doctrine of Pleasure:

- The Doctrine of Pleasure **originated in England** and represents a unique privilege of the British Crown. In England, individuals in the service of the Crown hold their positions at the pleasure of the Crown, subject to dismissal at the Crown's discretion.
- Under the Indian Constitution, the Doctrine of Pleasure is grounded in similar policy considerations as observed in English common law. The incorporation of the Doctrine of Pleasure into the Indian legal framework is evident **in Article 310(1)** which states that:
- "(1) Except as expressly provided by this Constitution, every person who is a member of a defence service or of a civil service of the Union or of an all India service or holds any post connected with defence or any civil post under the Union, holds office during the pleasure of the President, and every person who is a member of a civil service of a State or holds any civil post under a State holds office during the pleasure of the Governor of the State."

- However, the Constitution expressly excludes certain offices from the purview of the Doctrine of Pleasure, as indicated in specific articles:
  - Supreme Court Judges (Article 124)
  - Comptroller and Auditor General (Article 148)
  - High Court Judges (Article 217, 218)
  - Member of Public Service Commission (Article 317)
  - Chief Election Commissioner.

- **Term:** The Constitution does **not specify a fixed term of office for the AG,** nor does it outline the procedure or grounds for potential removal. The **AG serves at the pleasure of the President,** meaning they can be dismissed at any time. Additionally, the AG has the option to resign by submitting their resignation to the President. Traditionally, the AG tends to resign in tandem with the resignation or replacement of the government (council of ministers) since their appointment is based on the advice of the sitting government.
- **Salary:** The Constitution does not prescribe a set remuneration for the AG. Instead, he receives the remuneration decided by **the President.**

Responsibilities and Roles (Article 76(2))

As the principal legal advisor to the Government of India, the Attorney General (AG) is entrusted with the following responsibilities:

- To give advice to the Government of India upon such legal matters, and
- to perform such other duties of a legal character, as may from time to time be referred to or assigned to him by the President, and
- to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force.

Additionally, specific duties have been delegated to the Attorney General by the President, including:

- Representing the Government of India in all cases in the Supreme Court where the government is involved.
- Acting as the representative of the Government of India in any reference made by the President to the Supreme Court under Article 143 of the Constitution.
- Appearing, as required by the Government of India, in any High Court for cases in which the government has a stake.
- As per Contempt of Courts Act of 1971, if a private citizen takes a petition to the SC regarding Contempt of Court, he has to take the permission of the Attorney General at the central level.

Entitlements and Constraints

- **Article 76(3):** In the execution of his official duties, the Attorney General possesses the right of audience in all courts within the territorial jurisdiction of India.
- **Article 88:** Moreover, he is entitled to speak and actively participate in the proceedings of both Houses of Parliament, their joint sessions, and any parliamentary committee of which he is a member, though without the right to vote. The Attorney General enjoys the same privileges and immunities afforded to a Member of Parliament.
- He is not a government servant, and hence **not debarred from private practice.**

To prevent complications and conflicts of duty, certain limitations are imposed on the Attorney General:

- He is prohibited from advising or representing the Government of India against its interests.
- Without the permission of the Government of India, he cannot defend accused individuals in criminal prosecutions.
- Acceptance of an appointment as a director in any company or corporation requires the prior approval of the Government of India.
- He is not authorized to provide advice to any ministry, department of the Government of India, statutory organization, or public sector undertaking unless the proposal or reference is received through the Ministry of Law and Justice, Department of Legal Affairs.

India vs UK:

- Unlike in the UK, where the Attorney General is a member of the cabinet, Indian Attorney General does not have membership in the cabinet.

Solicitor General

- Apart from the Attorney General (AG), there exist other legal officers within the Government of India, namely, the Solicitor General of India and the Additional Solicitor General of India. These officers play a supportive role in assisting the AG with the discharge of his official duties.
- It is noteworthy that, while the position of the AG is constitutionally established, as outlined in Article 76, there is **no explicit mention** of the Solicitor General and Additional Solicitor General in the same constitutional provision.

- The positions and duties of the Solicitor General and Additional Solicitor Generals are governed by the Law Officers (Conditions of Service) Rules, 1987, which distinguishes them as statutory roles rather than constitutional ones.
- The Solicitor General, appointed for a **three-year term,** extends legal advice to the government and is nominated by the Prime Minister-led Appointment Committee of the Cabinet.
- While the Attorney General possesses the right to participate in parliamentary proceedings without voting privileges, the Solicitor General and Additional Solicitor Generals lack the entitlement to participate in such proceedings.

IGNITE YOUR MIND

Can you recall any recent landmark legal case in India where the Attorney General played a pivotal role? How did their involvement contribute to the resolution of the case and the development of legal precedent?

CONCLUSION

As a beacon of legal expertise and constitutional integrity, the Indian Attorney General plays a pivotal role in safeguarding India's legal framework. Their impartial counsel and unwavering commitment to upholding the rule of law are essential for maintaining the balance between executive power and legal principles.

The State Executive

17

INTRODUCTION

The Indian Constitution allocates powers among central and state institutions. In states, the State Executive comprises the Governor, Chief Minister, Council of Ministers, and Advocate General. Articles **153 to 167** in **Part VI** of the Constitution deal with the state executive.

The Governor

Article 153 states that there shall be a Governor for each state. The Governor holds the title of the **chief executive of the state**. However, similar to the president, the Governor's role is largely ceremonial. Besides this, the Governor also serves as an **agent of the central government,** giving the office of Governor a dual role.

Typically, each state has its own Governor, but the **7th Constitutional Amendment Act of 1956** made it possible for **one individual to serve as the Governor for two or more states.**

Appointment to the office of the Governor (Article 155)

- The Governor is not elected by the public vote.
- The position is filled without an electoral college, unlike the presidential elections.
- The Governor is appointed by the President by warrant under his hand and seal.
  - The **President** may **make such provisions** as he thinks fit for the **discharge of the functions of the Governor of a state in any contingency** not provided in the constitution.
- There is a convention that the Chief Minister of the state may be consulted before the appointment.
- The appointee essentially acts on behalf of the Central government.
- However, according to **Hargovind Pant vs Dr. Raghukul Tilak & ors. 1979,** this office does **not equate to employment** under the Central Government. The office is a distinct constitutional entity.
- It operates independently, without subordination to the Central government.

Governor Selection in Indian Constitution	
Origin	❑ **Draft constitution** proposed **Direct Election** based on **Universal Adult Franchise.**
Final Decision	❑ Adoption of the appointment system by the President. ❑ Election incompatible with parliamentary system in states. ❑ Direct Elections may lead to potential conflict with chief minister.
Reasons against Direct Election	❑ The Governor's role is **nominal. Direct election** is **unnecessary.** ❑ Election will be based on **personal issue, not in national interest.** ❑ Elected governor **might not** remain **politically neutral.** ❑ Possible rise in separatist tendencies, not good for national unity. ❑ Presidential nomination **maintains central control** over states. ❑ Complications during general election in states. ❑ Likely election of **sub-optimal candidates** as political compromise.
Final Model Adopted	❑ **Rejection of American Model** with direct election. ❑ **Adoption of Canadian Model** with central appointment.

Hence, the system where state Governors are elected by the people, as practiced in the United States of America, was rejected. Instead, the **approach used in Canada was adopted,** where a state's Governor is appointed by a central figure, the Governor-General. This method was agreed upon by the Constituent Assembly of India that the Governor should be appointed by the President.

The **Constitution specifies only two requirements** for someone to be appointed as a **Governor (Article 157)**

1. He should be a citizen of India.
2. He should have completed the age of 35 years.

Over time, **two conventions have emerged.**

- First, the appointee should not be from the state they will govern, ensuring that they are not influenced by local political issues.
- Second, the President should seek the input of the state's Chief Minister when appointing a Governor, to promote harmony in the state's governance. However, there have been instances where these practices have not been followed.

Conditions of Governor's Office (Article 158)

The Constitution has laid down following conditions for the Governor's office:

Condition for Governor's Office	Description
Membership Status	❑ Must not be a member of either House of Parliament or a House of the state legislature. Appointment as Governor results in vacating any such previous positions.
Holding Other Offices	❑ Must not hold any office of profit.
Official Residence	❑ Entitled to use the official residence (the Raj Bhavan) without paying rent.
Emoluments, Allowances, and Privileges	❑ Entitled to emoluments, allowances and privileges determined by the Parliament.
Appointment in Multiple States	❑ If serving as the Governor of more than one state, the emoluments and allowances are shared by the states as decided by the President.
Stability of Emoluments	❑ Salary and allowances cannot be reduced during his term of office. The salary has been increased from ₹1.10 lakh to ₹3.5 lakh per month by the Parliament.

Privileges and Immunities to the office of the Governor

- The President and Governors of States are crucial figures in the governance of India, with significant powers and responsibilities. **Article 361** of the Indian Constitution provides **legal protections to the President and Governors of States from civil and criminal proceedings.**
- Under **Article 361** the Governor, like the President, is **entitled to a number of privileges and immunities.** He enjoys following immunities:

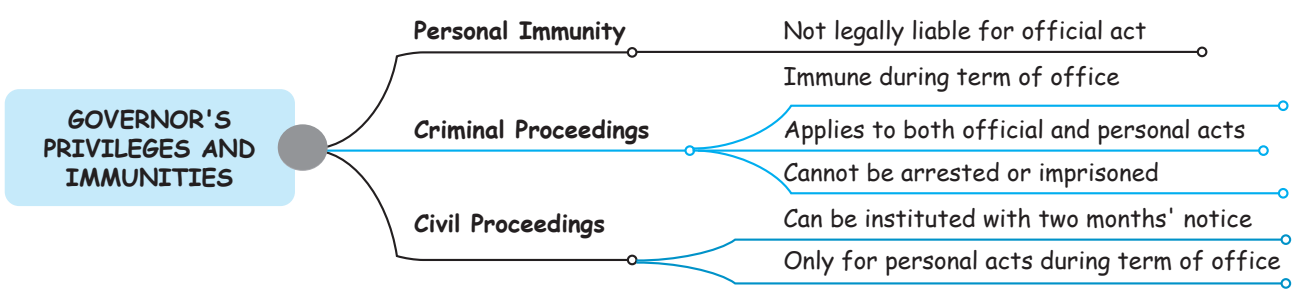

GOVERNOR'S PRIVILEGES AND IMMUNITIES
Personal Immunity
Not legally liable for official act
Immune during term of office
Criminal Proceedings
Applies to both official and personal acts
Cannot be arrested or imprisoned
Civil Proceedings
Can be instituted with two months' notice
Only for personal acts during term of office

Fig. 17.1: Governor's Privileges and Immunities

Oath or Affirmation to the office of Governor

Under Article 159, the Governor has to make and subscribe to an oath or affirmation before entering upon his office. In his oath, the Governor swears:

- To faithfully execute the office;
- To preserve, protect and defend the Constitution and the law; and
- To devote himself to the service and well-being of the people of the state.

The **oath of office to the Governor is administered by the Chief Justice of the concerned state High Court** and in his **absence, the senior-most Judge of that Court available.** Every person discharging the functions of the Governor also undertakes the similar oath or affirmation.

Provisions related to Term and Tenure of the office of Governor

- A Governor holds office for a term of five years and this term is subjected to the pleasure of the President. Moreover, a Governor can resign at any time by addressing a resignation letter to the President.

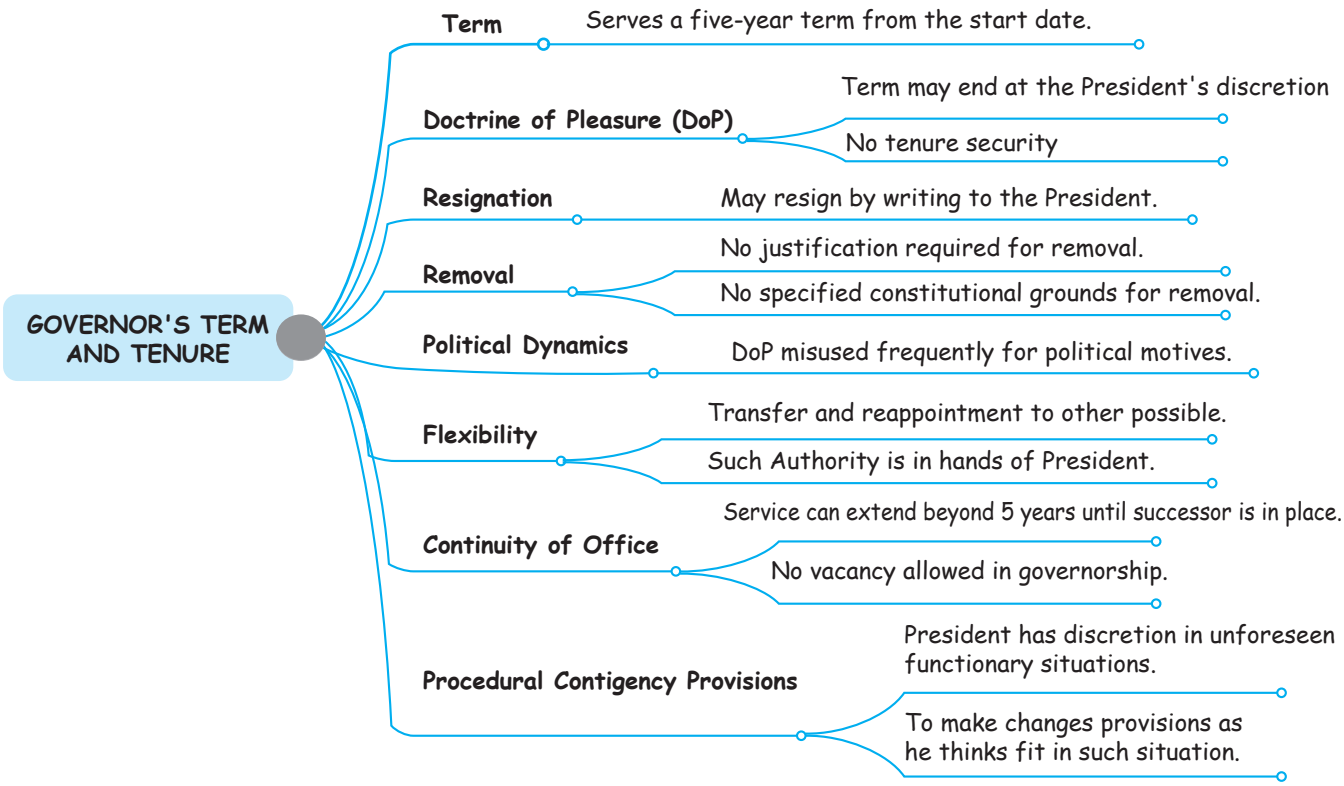

GOVERNOR'S TERM AND TENURE
Term
Serves a five-year term from the start date.
Doctrine of Pleasure (DoP)
Term may end at the President's discretion
No tenure security
Resignation
May resign by writing to the President.
Removal
No justification required for removal.
No specified constitutional grounds for removal.
Political Dynamics
DoP misused frequently for political motives.
Flexibility
Transfer and reappointment to other possible.
Such Authority is in hands of President.
Continuity of Office
Service can extend beyond 5 years until successor is in place.
No vacancy allowed in governorship.
Procedural Contigency Provisions
President has discretion in unforeseen functionary situations.
To make changes provisions as he thinks fit in such situation.

Fig. 17.2: Governor's Term and Tenure

- The **Supreme Court** has held that the **pleasure of the President is not justifiable.** The **Governor has no security of tenure and no fixed term of office**, he/she may be removed by the President at any time.
- The **Constitution has not laid down any grounds for the Governor's removal by the President.** The President holds the power to transfer a Governor from one state to another. Further, a Governor can be reappointed in the same or any other state.
- He/she may hold office beyond his/her term of five years until his/her successor assumes charge to uphold the idea that there can not be an interregnum, there must be a Governor in the state. In any contingency not provided in the Constitution, the President has the power to make provisions for the discharge of the Governor's duties **(Article 160).**

Important Judicial Verdicts Related Removal of Governor

- **Surya Narain Choudhary vs. Union of India (1981):** The Rajasthan High Court held that the pleasure of the President was not justiciable as the Governor had no security of tenure and can be removed at any time by the President withdrawing pleasure.
- **BP Singhal vs. Union of India (2010):** The Supreme Court elaborated on the pleasure doctrine. It upheld that "no limitations or restrictions are placed on the 'at pleasure' doctrine", but that "does not dispense with the need for a cause for withdrawal of the pleasure".

The Bench held that the court will presume that the President had **"compelling and valid"** reasons for the removal, but if a **sacked Governor comes to the court, the Centre will have to justify its decision**.

Powers and Functions of the Governor

The Governor of a state possesses executive, legislative, financial and judicial powers. However, he has no diplomatic, military or emergency powers like the President.

Executive Powers

❑ **The executive functions of the Governors are:**

- **All executive actions** of the state government are formally taken in his/her name.
- **Orders and other instruments,** made and executed in the name of the Governor, shall be authenticated in such a manner specified by the Governor.
- The Governor shall **make rules for the more convenient transaction of the business** of the state government and for the allocation among the ministers of the said business.
- He/She **appoints the Chief Minister and other ministers.** They hold office during his/her pleasure. There should be a Tribal Welfare Minister in the states of Chhattisgarh, Jharkhand, Madhya Pradesh and Odisha. The 94th Amendment Act, 2006, excluded Bihar from this provision.
- He/She can seek any information related to the administration of the state and proposals for legislation from the Chief Minister.
- He/She can ask the Chief Minister to submit for the consideration of the Council of Ministers any matter on which a minister has taken the decision but the same has not been considered by the council.
- He/She can recommend to the President for the imposition of constitutional emergency in a state.
- He/She serves as the Chancellor of universities in the state. He has the power to appoint the Vice-Chancellors of universities in the state. Many states have introduced bills to alter the provision for appointment of VCs by the Governor like Tamil Nadu and Kerala.

Legislative Power

❑ **The Governor has following legislative functions:**

- Summoning, proroguing, dissolving State Legislature.
- Addressing State Legislature at session's commencement.
- Sending messages regarding bills to the Legislature.
- Appointment of session presiding members in vacancies.
- Nominating legislative council members with special expertise.
- Anglo-Indian community member nomination to assembly.
- Disqualification decisions on State legislature members.
- Assent, reservation, or return of state bills.
- Obligatory reservation for bills affecting High Court.
- Promulgation and withdrawal of ordinances.

The appointment of one member to the state legislature assembly from the assembly from the **Anglo- Indian Community by the Governor has been done away with by the 104th Constitutional Amendment Act.**

Financial Powers

❑ **The financial functions of the Governor are:**

- **Annual Financial Statement** is laid before the state legislature under his supervision.
- His **prior recommendation** is required to introduce Money bills in the state legislature.
- **Demand for grants** can be made only on his recommendation.
- He can make **advances out of the Contingency Fund** of the state.
- **Establishment of a Finance Commission** after every five years.

Judicial Powers

❑ **Judicial functions of the Governor are:**

- He may grant reprieves, pardons, respites, remissions, and commutations of the sentence under state laws.
- While appointing the judges of the concerned High Court, he is consulted by the President.
- Appointments, postings, and promotions of the district judges upon consultation with the state High Court.
- Appointments to the judicial service of the state (except the District Judge) after consulting with the state High Court and the State Public Service Commission.

The **three powers of the Governor** i.e. **veto power, ordinance-making power and pardoning power** are studied in comparison with that of the President.

Governor's Assent to the State Bills

Every bill that is passed by the state assembly needs the assent of the Governor, as the **Governor is an integral part of the state legislature.** The **Constitution of India** has provided **elaborate provisions** for the **Governor's approval** to various kinds of state bills.

In this context, Article 200 and article 201 need elaboration, as discussed below:

Article 200:

- Article 200 of the Indian Constitution **outlines the process for a Bill passed by the Legislative Assembly of a State to be presented to the Governor for assent,** who may either assent, withhold assent, or reserve the Bill for consideration by the President.
- The **Governor may also return the Bill** with a message requesting reconsideration by the House or Houses.

Article 201:

- It states that when a **Bill is reserved for the consideration of the President,** the President **may assent** to or **withhold assent** from the Bill.
- The **President may also direct the Governor to return the Bill** to the House or Houses of the Legislature of the State for reconsideration.

Further, the powers of the Governor related to giving assent to the bills can be better understood when we compare them with similar powers of the President of India.

Comparison of Powers Related to Ordinary and Money Bills of Governor vis-a-vis President

Aspect	President	Governor
Ordinary Bill Options	❑ Assent to pass the bill and make it a law. ❑ Withhold his assent and the bill then ends. ❑ Return for reconsideration (except when re-passed by both the Houses or it's a money bill). Here the President has only suspensive veto.	❑ Assent to pass the bill and make it a law. ❑ Withhold his assent and the bill then ends. ❑ Return for reconsideration (except when re-passed by both the Houses or it's a money bill). Here the Governor has only a suspensive veto. ❑ Reserve for President's consideration. In such cases the President can give his assent, withhold it or return the bill to the state assembly. When a bill is returned by the President, the House or Houses have to reconsider it within a time period of six months.
When Bill is Re-passed	❑ Must assent if the returned bill is passed again without amendments.	❑ If the bill returned for reconsideration is re-passed with or without amendments by the state legislature, the Governor must give his assent(suspension veto). ❑ If a bill is reserved for the assent of the President, and the bill is again presented before the President, he is not bound to give his assent to the bill. He may assent or withhold his assent. the Governor's assent becomes unnecessary.
Money Bill Process	❑ Can only assent or withhold; cannot return for reconsideration.	❑ Same as the President; ❑ Also the Governor can reserve the bill for the President's consideration. Governor's assent is not required if the President gives his assent. ❑ In such a case the President has two alternatives: he can either give his assent or withhold it but can not return the bill.
Action on Reserved Bills	❑ Decides to assent or withhold; cannot return money bills for reconsideration.	❑ No further role after reservation; if the President assents, the Governor's assent is not required.

Supreme Court verdict in Punjab Government case on Governors withholding of State bills

- Recently, the Supreme Court (SC) of India stated that when the Governor chooses to withhold assent to a Bill, it is **mandatory for them** to follow a specific course of action outlined **in Article 200 of the Constitution.**
- The key aspect of **Article 200** is that it mandates the **Governor to communicate their reasons for withholding assent and prompt the Legislature to reconsider the Bill.**
- The **SC has held that if a Governor** decides to **withhold assent** to a Bill, then **he has to return the bill to the legislature for reconsideration.**
- The **Governor's withholding of assent** without the necessary step of communicating the need for the Legislature to reassess the Bill **violates constitutional principles.**

Comparison of Powers Related to Ordinance Making Powers of Governor vis-a-vis President

Ordinance Making Powers	President	Governor
When Can Ordinances Be Promulgated	When neither or only one House of Parliament is in session.	When the state legislative assembly (unicameral) or neither House (bicameral) is in session.
Conditions for Promulgation	If he believes immediate action is needed.	Same as the President.
Scope of Power	Co-extensive with Parliament's legislative powers.	Coextensive with the state legislature's powers.
Effect of Ordinance	Equivalent to an Act of Parliament.	Equivalent to an Act of the state legislature.
Limitations	Subject to the same limitations as Parliament's legislative powers.	Subject to the same limitations as the state legislature's powers.
Withdrawal	Can withdraw an ordinance at any time.	Same as the President.
Discretionary Power	Not a discretionary power; ministers must recommend.	Same as President; based on the advice of the Chief Minister.
Presentation	Must be presented to both the Houses of Parliament upon reassembly.	Must be presented to both the Houses of the state legislature upon reassembly.
Expiry	Ceases after six weeks from reassembly or if disapproved earlier.	Ceases after six weeks from reassembly or if disapproved earlier by the Legislative Assembly.
Requirement for Instructions	No instruction needed for ordinance-making.	Requires President's instructions in certain cases related to bills and provisions previously sanctioned by the President.

Comparison of Pardoning Powers of the Governor vis-a-vis of the President

Pardoning Powers	President	Governor
Pardoning Powers related to Central or State laws	Can pardon, reprieve, respite, remit, suspend, or commute sentences under Central law.	Can pardon, reprieve, respite, remit, suspend, or commute sentences under State law.
Death Sentence	Exclusive power to pardon a death sentence.	Cannot pardon a death sentence; Can only suspend, remit, or commute it.
Court-Martial Cases	Can pardon, reprieve, respite, suspend, remit, or commute punishments.	No such powers in cases of court-martial.

IGNITE YOUR MIND

Often, Governors in Opposition-ruled states are in conflict with their respective elected governments. Do you think the recent actions of Governors are aligned with the constitutional spirit? Do you think there is a need for more clarification and amendments in the Constitutional provisions of Governor to prevent ambiguity in their functions?

Constitutional Position of the Governor

- **Article 154, 163, and 164** are pivotal to understand the **constitutional position of the Governor.**
- **Article 154** states that the **executive power of the state** shall be vested in the Governor and shall be exercised by him/her either directly or through officers subordinate to him in accordance with this Constitution.
- **Article 163** states that there shall be a **council of ministers with the Chief Minister as the head to aid and advise the Governor** in the exercise of his functions, except in so far as he is required to exercise his functions in his discretion.
- **Article 164** states that the **Council of Ministers shall be collectively responsible** to the legislative assembly of the state.

The Constitutional position of the Governor is different from the President in the following two ways:

- **No discretionary power** has been provided for the President by the Constitution.
- **Advice of the Council of Ministers has been made binding on the President** by the 42nd Constitutional Amendment Act of 1976 but there is no such provision for the office of the Governor.

It has been **made clear by** the **Constitution** that if any question arises about a matter falling within the **purview of the Governor's discretion or not**, the **decision of the Governor is final.**

Governors of All States Enjoy Following Discretionary Powers Under Specific Circumstances 'by Implication'

Reservation of Bills passed by the State Legislature for the consideration of the President

In order for a bill passed by a State legislature to become an **Act**, it must **receive the approval of the Governor or the President,** particularly when the bill is reserved for the **President's consideration (Article 200).**

When a State legislature passes a bill, it goes through a process with the Governor. Under **Article 200 of the Constitution,** the Governor has **four choices**:

- The Governor may approve the bill.
- The Governor may reject the bill.
- The Governor can send the bill (if not a Money Bill) back to the State Legislature for further review.
- The Governor may reserve the bill for the President's consideration.

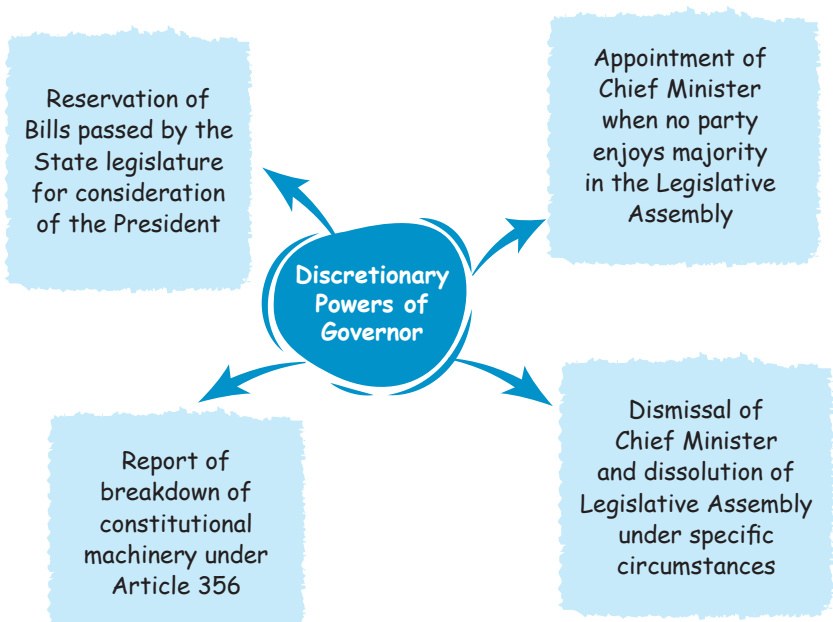

Discretionary Powers of Governor
Reservation of Bills passed by the State legislature for consideration of the President
Appointment of Chief Minister when no party enjoys majority in the Legislative Assembly
Report of breakdown of constitutional machinery under Article 356
Dismissal of Chief Minister and dissolution of Legislative Assembly under specific circumstances

Fig. 17.4: Discretionary Powers Under Specific Circumstances

Governor holds a **Suspensive veto** over a State bill, similar to how the President has it over Union legislation. In unique situations, the Governor may also wield an **Absolute veto** or **Pocket veto** over State bills.

Additionally, the Governor has the authority to reserve any bill passed by the State Legislature for the **President's consideration. Typically,** this decision is made based on the **advice of the State Council of Ministers.** However, if the **Governor believes** that a particular bill might impact Union powers or violate the Constitution's provisions, they can use their discretion to reserve the bill for the President's consideration.

Under the Constitution, bills passed by state legislatures and **reserved for the President's consideration** fall into distinct categories.

- **Mandatory Reservation:**

  These bills must be reserved for the President's consideration, and they include:
  - Bills reducing the powers of the High Court, endangering its intended role (second proviso to Article 200).
  - Bills related to the imposition of taxes on water or electricity in specific cases, falling under Clause (2) of Article 288.
  - Money Bills or Financial Bills passed during a Financial Emergency, mandated to be submitted for the President's consideration (Article 360).

  These provisions explicitly require the Governor to act in a particular manner, ensuring the bills are reserved for the President.

- **Permissive Reservation for Specific Purposes:**

  Bills in this category may be reserved for the President's consideration and assent for specific purposes:
  - Bills securing immunity from the operation of Articles 14 and 19, such as those related to the acquisition of estates [First Proviso to Article 31A(I)] and implementing Directive Principles of State Policy (Proviso to Article 31C).
  - Bills related to subjects in the Concurrent list, ensuring operation despite repugnancy to Union law or existing law, with the President's assent under Article 254(2).
  - Legislation imposing restrictions on trade and commerce, requiring Presidential sanction under the Proviso to Article 304(b) read with Article 255. The Governor may reserve bills in this category based on the advice of the State Council of Ministers.

- **Discretionary Reservation:**
  - Bills not falling specifically under the above categories may still be **reserved by the Governor for the President's consideration under Article 200**. This is rare, and the Governor exercises discretion when they believe the **bill's** provisions may contravene the Constitution. The **Governor may reserve bills at their discretion,** feeling it prudent to seek the President's consideration if there's a potential contravention of constitutional provisions. Whenever a bill is reserved by a Governor for the President's assent, the process follows the provisions of **Article 201.**

- In the period from 2012-17, for instance, 188 bills were reserved by various State Governors for the President's consideration. Among these, 155 received assent, 12 were returned with a message, and assent was withheld for 18 bills (absolute veto).

Report of Breakdown of Constitutional Machinery under Article 356

- **Article 356** allows for the enforcement of the President's rule by making a proclamation when the State Government cannot function in line with the Constitution. The **President can make this proclamation** based on a report from the Governor or other means.
- The Governor will submit such a report if the ruling ministry attempts to undermine the Constitution or loses its majority in the Legislative Assembly. Importantly, the Governor independently issues this report without consulting the Council of Ministers.
- Additionally, if a ministry resigns and no alternative party or coalition can form a government, the Governor may suggest the imposition of the President's rule through their report under Article 356.
- Over time, there have been instances of **controversial misuse of the powers granted by Article 356.** However, the **Supreme Court's judgement** in the **S. R. Bommai case in 1994** has played a crucial role in restricting this misuse. The judgement subjected the Presidential proclamation under Article 356 to judicial review, thereby curbing the arbitrary exercise of this power.

Appointment of the Chief Minister when No Party Enjoys Majority in the Legislative Assembly

- In situations where no political party holds a clear majority in the Legislative Assembly, the appointment of the Chief Minister in accordance with **Article 164** of the Constitution becomes a nuanced process. The Governor, vested with the authority to make this appointment, traditionally selects the leader of the party with the majority in the Assembly. However, when no single party commands such a majority, the Governor exercises discretion in choosing the Chief Minister.
- **The Sarkaria Commission,** tasked with providing recommendations in such scenarios, outlined a specific order of preference. If no party secures a majority, the Governor should consider the following:
  - An alliance of parties formed before the elections.

- The largest single party **claims** to form the government with support from others, including independents.
- A post-electoral coalition of parties, with all coalition partners joining the government.
- A post-electoral alliance of parties, where some parties in the alliance form the government, and others, including independents, support the government from outside.

Dismissal of Chief Minister and dissolution of the Legislative Assembly

- In the **matter of removing a Chief Minister,** there is a **lack of consistency in the criteria applied.** Clearly, a Chief Minister cannot remain in office if he/she no longer commands a majority in the Legislative Assembly. It is **customary for a Chief Minister to promptly resign** or present themselves before the Legislative Assembly to demonstrate ongoing majority support.
- However, the **Chief Minister of West Bengal, in 1967,** neither resigned nor faced the Assembly within the timeframe given by the Governor. Despite the Governor's initial two-week allowance, later extended by a week until the end of November 1967, the Ministry refused to summon the Assembly before December 1967. Consequently, the **Governor dismissed the Ministry on November 21, 1967.**
- A **similar situation occurred in Uttar Pradesh in 1970,** where the Chief Minister was asked to resign despite being willing to face the Assembly within two days. In 1998, the Governor of Uttar Pradesh dismissed Chief Minister Mr. Kalyan Singh and appointed Mr. Jagadambika Pal without testing Mr. Kalyan Singh's Ministry's strength on the House floor.
- **Diverse approaches have been observed among Governors in comparable scenarios** involving the dissolution of the Legislative Assembly. **Normally, a Governor is bound by the advice of a Chief Minister with majority support.**
- However, in cases where the **Chief Minister lost such support,** some Governors rejected the dissolution of the Legislative Assembly based on their advice, while others accepted it. For instance, in **Kerala (1970) and Punjab (1971)**, the Assembly was dissolved based on the doubtful claim of majority support by the Chief Minister. Conversely, in Punjab (1967), Uttar Pradesh (1968), Madhya Pradesh (1969), and Orissa (1971), the Legislative Assembly was not dissolved, and efforts were made to establish alternative Ministries.

The Sarkaria Commission Report summarizes these instances and recommends specific courses of action:

(a) **Dismissal of Chief Minister:** The Governor should dismiss a Chief Minister if they fail to resign after the Council of Ministers loses majority support in the Legislative Assembly. The determination of whether a ministry enjoys majority support should only be made through a floor test. If the Chief Minister refuses to convene the Assembly session for a confidence motion, the Governor may summon the House themselves and instruct the Council of Ministers to prove their majority.

(b) **Dissolving Legislative Assembly:** If, after the resignation of the incumbent government, no viable alternative emerges for a stable government, the Governor may either dissolve the Assembly or recommend **the President's rule under Article 356,** depending on the circumstances.

Others Constitutional Discretion of the Governor:

- Fixing the amount payable by the Government of Assam, Meghalaya, Tripura, and Mizoram.
- His discretion regarding his functions as the administrator of an adjoining Union Territory.
- Seeking information from the Chief Minister regarding the administrative and legislative matters of the State.

In addition, the Governor holds specific duties that must be carried out under the guidance provided by the President. While the Governor is required to engage with the Council of Ministers, which is headed by the Chief Minister, the ultimate decision is taken at the Governor's discretion in the following matters:

Serial No.	State	Special Responsibilities of the Governor
1.	Maharashtra	Establishment of separate development boards for Vidarbha and Marathwada.
2.	Gujarat	Establishment of separate development boards for Saurashtra and Kutch.
3.	Nagaland	Concerning law and order as long as internal disturbances continue in Naga Hills-Tuensang Area.
4.	Assam	Pertaining to the administration of tribal areas.

5.	Manipur	Regarding the administration of hill areas in the state.
6.	Sikkim	For peace and for the social and economic progress of various community sections.
7.	Arunachal Pradesh	With respect to law and order in the state.
8.	Karnataka	Establishment of a separate development board for the Hyderabad-Karnataka region.

Note: Bihar has been freed from the obligation of having a tribal welfare minister *by the 94th Amendment Act of 2006. The same amendment act extended the provision of having a tribal welfare minister to the newly formed states of Jharkhand and Chhattisgarh.*

Issues Related to the Office of Governor

- Abuse of Governor's Position.
  - Often **manipulated by the central ruling party.**
  - Criticised as Centre's agent/puppet.
  - Misuse of President's Rule (Article 356) Politicians, bureaucrats with ideology preferred.
- Biased Appointments.
- Violation of Conduct leading to negative perceptions.
  - Ex-Rajasthan Governor had breached model code of conduct, in 2019.
- Misuse of Discretionary Powers.
  - Discretion in government formation exploited.
- Reduced Significance: Governor's role deemed ceremonial.
- Governor's Reporting.
  - Minimal public duties, report to President.
- Arbitrary Removal (Doctrine of Pleasure).
  - Can be removed without just cause.
  - No security of Tenure.

Examples of Recent Controversies Associated with the office of the Governor:

- The **Governor of Tamil Nadu** left the assembly session of the house while the Chief Minister pointed out that the **Governor skipped a certain portion of the speech** that he was supposed to read. This has again raised questions over the powers and functions of the Governor.
- A bill from West Bengal seeking to make the Chief Minister the chancellor of all state-run universities, replacing the Governor, was passed by the assembly in 2022 (still pending for the assent of the Governor).

Reforms Needed Regarding the Office of the Governor

Reforms Proposed by Various Committees	
Punchi Commission	The impeachment of the governor by the state legislature.
	Abolish the governor becoming chancellor of state university.
2nd ARC	Inter-state council to guide governors discretionary power.
Rajamannar Commission	Governor should act as constitutional head not centre's agent.
Sarkaria Commission	Restriction on Article 356 use to rare breakdowns of State constitutional machinery.
Venkatachaliah Commission	Governor to complete a 5-year term normally.
	Suggest Chief Ministers Consultation during Governor Appointment.
NITI Aayog	Abolish Governor's position in small states/UT's.
National Commission to Review the Working of Constitution	Collegium system for Governor's appointment.
	Governor to have ceremonial role Centre to consult chief minister before removal of governor.

Sarkaria Commission Recommendations with Respect to the Appointment of a Governor

The **Sarkaria Commission,** tasked with **examining relations between the Centre and the States**, put forward several recommendations regarding the **appointment of Governors.** These include:

- Selection of an **eminent person from outside the State**.
- A requirement for the **appointee to have been inactive in politics** for a certain period before appointment.
- **Appointment in consultation with the Chief Minister of the State, the Vice-President of India, and the Speaker of the Lok Sabha.**
- Ensuring a **guaranteed tenure,** except under compelling circumstances. If termination is considered, the individual should be given an opportunity to be heard, and the reasons for removal must be presented before the Houses of Parliament.
- **Governors should not be eligible for any other appointment to an office of profit** under the Union or the State Government, except for a second term as Governor or Vice-President of India.

Despite these recommendations, the actual practice deviates significantly. The **appointment** of Governors is **predominantly at the discretion of the Central government.** While the **tradition of selecting someone from outside the State has been maintained,** consulting the Chief Minister of the State hasn't consistently been followed.

Historically, there have been widespread replacements of Governors during changes in the central government. For instance, in 2004, the United Progressive Alliance (UPA) Government replaced nearly 17 Governors appointed by the previous National Democratic Alliance (NDA). Similarly, in 2014, the NDA Government replaced approximately 7 Governors appointed by the prior UPA Government.

To move forward, it is imperative to implement the Sarkaria Commission's recommendations. This would help ensure that the appointment of Governors remains insulated from political controversies, promoting a more transparent and accountable process.

Navigating the Appointment Landscape: A Path to Equitable Governance

The **appointment of Governors,** a crucial aspect of India's federal structure, has often been a subject of debate. **To ensure a fair and transparent process, a high-level committee** comprising the **Prime Minister, the Home Minister, the Lok Sabha Speaker, and the Chief Minister** of the concerned state should be **tasked with selecting Governors.**

This committee would uphold a **neutral constitutional stance,** recognizing the Governor's role as an independent, non-partisan figure.

Striking a balance between state interests and Centre-State relations is paramount. The committee's decision-making process should carefully consider the state's aspirations and priorities while aligning them with the broader national framework.

A **comprehensive Code of Conduct** should be formulated to guide the Governors' actions, establishing clear norms and principles for their discretion and mandate.

The **Governors' discretionary powers** should be exercised with the **utmost caution**, ensuring that their decisions are reasoned, well-intentioned, and in the best interests of the state and the nation. **Regular consultations with the state government** and open communication channels would foster transparency and mutual understanding.

By implementing these measures, we can reimagine the appointment procedure, paving the way for a system that upholds constitutional principles, respects state autonomy, and promotes harmonious Centre-State relations. This transformative approach will ensure that the Governor's role remains a cornerstone of India's vibrant democracy.

The Chief Minister

Under the **Parliamentary system** established by the Constitution, the **Governor is a state's de jure head**, but **de facto executive authority rests with the Chief Minister**. This means the Governor holds the title of executive authority, while the Chief Minister exercises actual executive power. Therefore the Governor is the state's ceremonial leader, and the Chief Minister is the leader of the state government. Consequently, the **role of the Chief Minister in a state is comparable to that of the Prime Minister** at the national level.

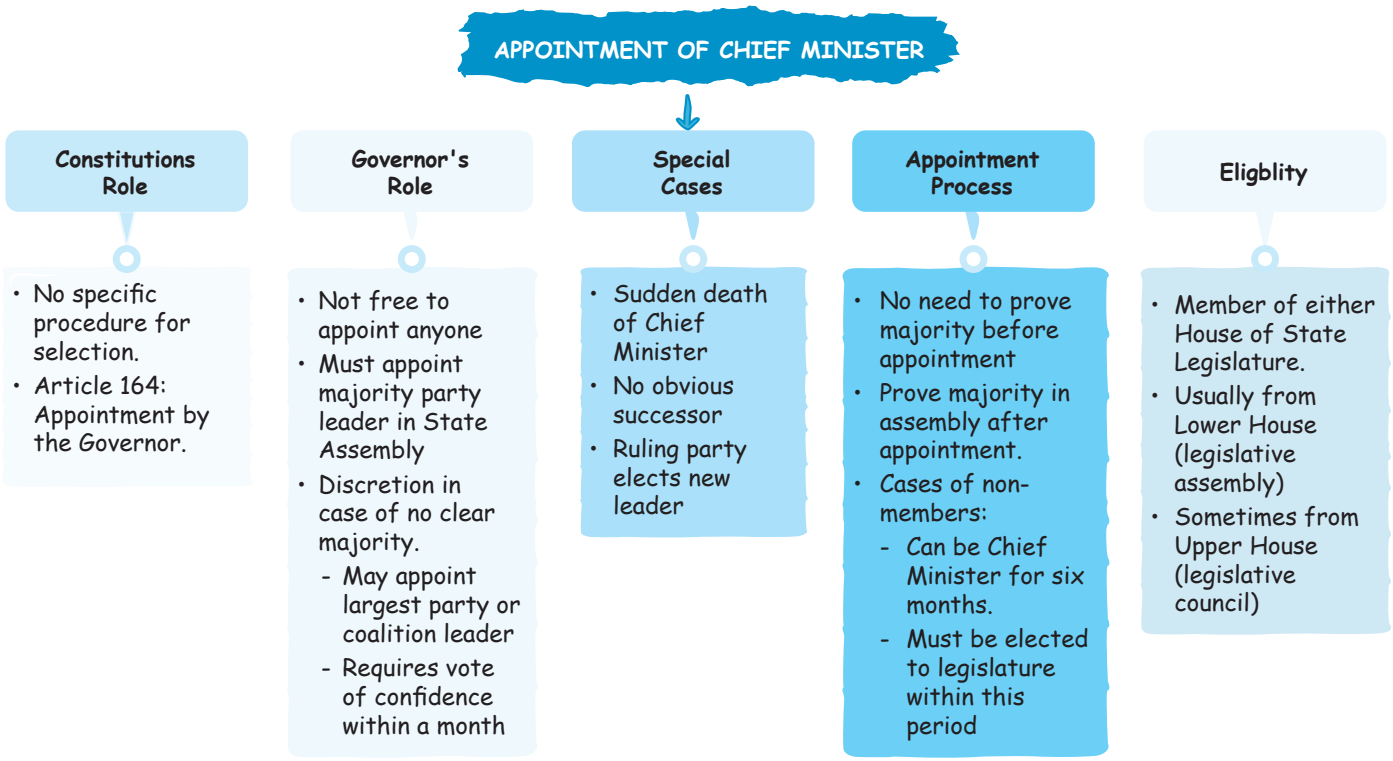

APPOINTMENT OF CHIEF MINISTER
Constitutions Role
No specific procedure for selection.
Article 164: Appointment by the Governor.
Governor's Role
Not free to appoint anyone
Must appoint majority party leader in State Assembly
Discretion in case of no clear majority.
May appoint largest party or coalition leader
Requires vote of confidence within a month
Special Cases
Sudden death of Chief Minister
No obvious successor
Ruling party elects new leader
Appointment Process
No need to prove majority before appointment
Prove majority in assembly after appointment.
Cases of non-members:
Can be Chief Minister for six months.
Must be elected to legislature within this period
Eligblity
Member of either House of State Legislature.
Usually from Lower House (legislative assembly)
Sometimes from Upper House (legislative council)

Fig. 17.5: The Chief Minister

Appointment of Chief Minister and Other Members	
Article 164	❑ The Chief Minister is appointed by the Governor, and other Ministers are appointed by the Governor based on the Chief Minister's advice. ❑ Ministers serve at the Governor's pleasure. ❑ In Bihar, Madhya Pradesh, and Orissa, there must be a Minister in charge of tribal welfare, who may also handle the welfare of Scheduled Castes and backward classes or other tasks.
	❑ The Council of Ministers is collectively accountable to the State Legislative Assembly.
	❑ Before taking office, a Minister is administered oaths of office and secrecy by the Governor, following the forms in the Third Schedule.
	❑ A Minister who has not been a member of the State Legislature for six consecutive months ceases to hold office.
	❑ Salaries and allowances of Ministers are determined by the State Legislature. Until then, they follow the specifications in the Second Schedule. This provision also applies to the Advocate General for the State.

Oath, Salaries and the term of the Chief Minister

Category	Related Details
Oath Administered	The Governor administers the oaths of office and secrecy to the Chief Minister.
Oath of Office	❑ To bear true faith and allegiance to the Constitution of India.
	❑ To uphold the sovereignty and integrity of India.
	❑ To faithfully and conscientiously discharge the duties of his office.
	❑ To do right to all manner of people in accordance with the Constitution and the law, without fear or favour, affection or ill-will.
Oath of Secrecy	The Chief Minister swears not to reveal any confidential information except for duty discharge.

Term of Office	❑ Not fixed by Constitution of India
	❑ Holds office during the pleasure of the Governor.
	❑ In SR Bommai case, 1994, Supreme court held that - Chief minister and council of Ministers cannot be dismissed by the Governor if he enjoys majority support in the legislative assembly.
	❑ Must resign or can be dismissed by the Governor if he loses the assembly's confidence.
Salary and Allowances	❑ Determined by the state legislature.
	❑ Includes salary and allowances of a state legislature member.
	❑ Additional benefits: sumptuary allowance, free accommodation, travelling allowance, medical facilities, etc.

Multiple Powers and Functions of the Chief Minister

❑ **In Relation to Council of Ministers**

- Recommends person to be appointed as minister to the Governor.
- Allocates and reshuffles portfolios among ministers.
- Can ask a minister to resign or advise the Governor to dismiss.
- Presides over council meetings and influences decisions.
- Guides, directs, controls, and coordinates ministerial activities.
- Can dissolve the council by resigning.

❑ **In Relation to the Governor**

- Principal channel of communication between Governor and council.
- Communicates state administration decisions and legislative proposals.
- Furnishes information and submits matters for council consideration.
- Advises on appointments of key officials.

❑ **In Relation to State Legislature**

- Advises on summoning and proroguing legislative sessions.
- Can recommend dissolution of the legislative assembly .
- Announces government policies in the house.

❑ **Other Powers and Functions**

- Chairman of the State Planning Board.
- Vice-chairman of the zonal council by rotation.
- Member of the Inter-State Council and NITI Aayog. Chief spokesman of the state government.
- Crisis manager-in-chief during emergencies.
- Engages with public and addresses their problems.
- Political head of the services.

IGNITE YOUR MIND

Envision the role of Chief Ministers in India in the year 2050. How would you anticipate changes in governance structures, policy priorities, and international relations influencing the role of Chief Ministers and their cabinets?

❑ **Overall Role**

- Significant role in state administration.
- Influence moderated by the Governor's discretionary powers.

Relationship of the Chief Minister with the Governor

Constitutional Article	Provision	Details
Article 163	Council of Ministers	Headed by the Chief Minister. Role: To assist and advise the Governor in his functions. Exception: Governor's discretion in certain functions.
Article 164	Appointment and Tenure of Ministers	(a) Chief Minister's Appointment: Appointed by the Governor. Other Ministers' Appointment: Appointed by the Governor based on the Chief Minister's advice. (b) Tenure of Ministers: hold office during the pleasure of the Governor. (c) Responsibility: Collective responsibility to the State Legislative Assembly.

Article 167	Duties of the Chief Minister	(a) Communication with the Governor: Must inform the Governor about decisions and legislative proposals of the council. (b) Furnishing Information: Provide information as requested by the Governor. (c) Council Consideration: Must present matters for the council's consideration if required by the Governor.

The State Council of Ministers in India

The Indian Constitution establishes a Parliamentary system of government in the states, similar to that of the Union Government. In this system, the Council of Ministers, led by the Chief Minister, serves as the primary executive authority in a state's political and administrative framework. This Council is formed and operates in a manner akin to the Council of Ministers at the national level.

While the Constitution does not elaborate in detail on the principles of the Parliamentary system, it broadly outlines them in Articles 163 and 164. Article 163 focuses on the role and status of the council of ministers. In contrast, Article 164 addresses various aspects of the Ministers, including their appointment, tenure, responsibilities, qualifications, the oath of office, and their salaries and allowances.

Constitutional Provisions for State Council of Ministers

- **Article 163 - Council of Ministers to Aid and Advise Governor**
  - Council of Ministers headed by Chief Minister.
  - Advises Governor, except in discretionary matters.
  - Governor's discretion final and unquestionable.
  - Ministers' advice to Governor not subject to court inquiry.
- **Article 164 - Other Provisions as to Ministers**
  - Chief Minister appointed by Governor.
  - Other Ministers appointed on Chief Minister's advice.
  - Tribal Welfare Minister mandatory in certain states.
  - Ministerial strength: 15% of assembly strength, minimum 12.
  - Disqualification on defection grounds.
  - Ministers serve at Governor's pleasure.
  - Collective responsibility to State Legislative Assembly.
  - Oaths administered by Governor.
  - Minister ceases to exist if not a legislature member for 6 months.
  - Salaries and allowances set by State Legislature.
- **Article 166 - Conduct of Business of the Government of a State**
  - Executive action in Governor's name.
  - Orders authenticated as specified by Governor.
  - Rules for transaction of government business.
- **Article 167 - Duties of Chief Minister**
  - Communicate decisions and proposals to Governor.
  - Furnish information as requested by Governor.
  - Submit matters for Council consideration if required.
- **Article 177 - Rights of Ministers as Respects the Houses**
  - Right to speak and participate in Assembly and Council.
  - No voting rights for Ministers.

Nature of Advice by Ministers as mentioned in Article 163 of the Constitution

- **Council of Ministers' Role:**
  - Led by the Chief Minister.
  - Tasked to aid and advise the Governor in his functions, excluding discretionary areas.
- **Governor's Discretion:**
  - Governor's decision on whether a matter is discretionary is final.
  - Actions taken by the Governor under discretion cannot be challenged based on the appropriateness of using discretion.
- **Confidentiality of Advice:**
  - Advice given by the Ministers to the Governor is confidential.
  - Courts cannot inquire into the nature of this advice.
  - Emphasises a close and confidential relationship between the Governor and Ministers.
- **Supreme Court Rulings:**
  - 1971: A council of ministers must always be present to advise the Governor, even after the State Legislative assembly is dissolved or a council resigns.
  - The existing ministry continues until a new one is appointed.
- **Governor's Actions:**
  - Except in discretionary areas, the Governor must act based on the Council of Ministers' advice.
  - The Governor is not to act personally or against the council's advice.
- **Constitutional Requirement:**
  - Where the Constitution requires the Governor's satisfaction, it refers to the satisfaction of the Council of Ministers, not the personal satisfaction of the Governor.

Appointment Provisions Related to Ministers in the State Council of Ministers

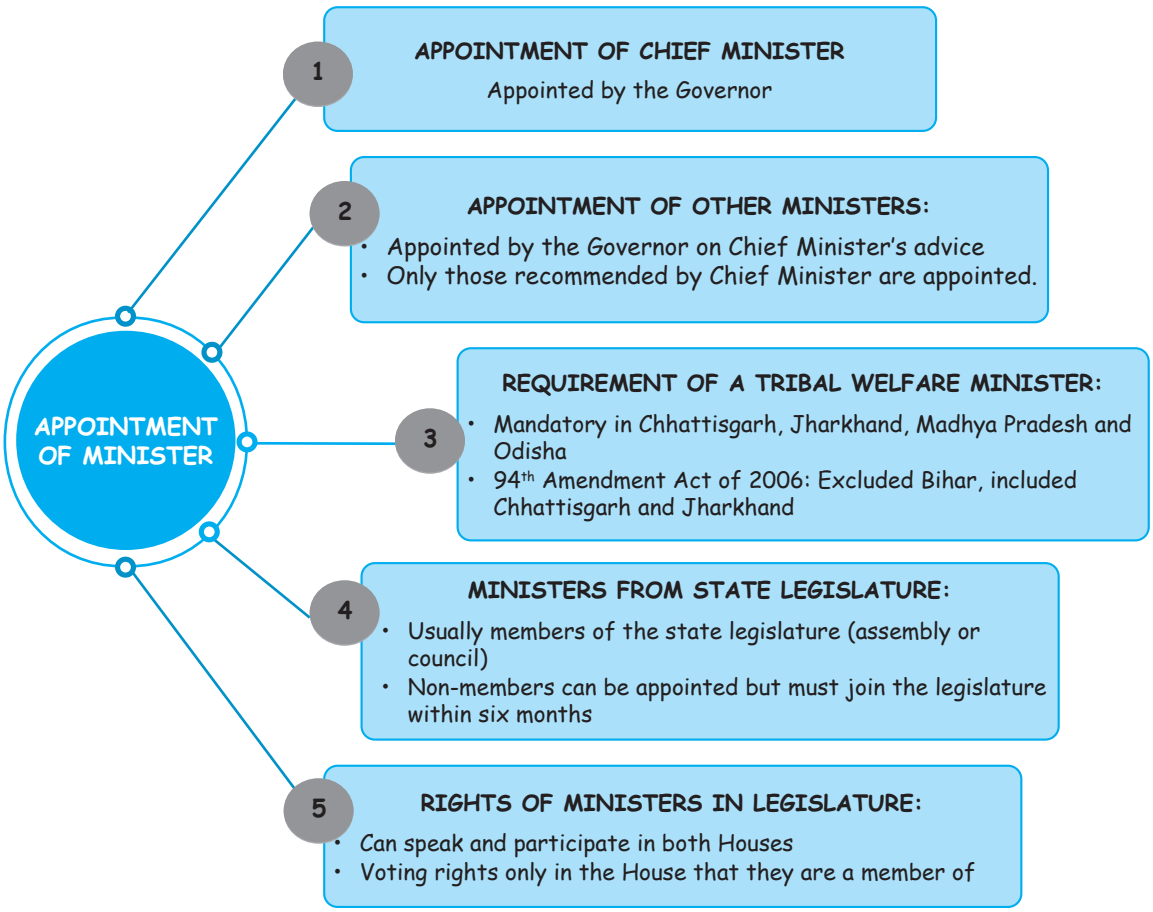

APPOINTMENT OF MINISTER
1
APPOINTMENT OF CHIEF MINISTER
Appointed by the Governor
2
APPOINTMENT OF OTHER MINISTERS:
Appointed by the Governor on Chief Minister's advice
Only those recommended by Chief Minister are appointed.
3
REQUIREMENT OF A TRIBAL WELFARE MINISTER:
Mandatory in Chhattisgarh, Jharkhand, Madhya Pradesh and Odisha
94th Amendment Act of 2006: Excluded Bihar, included Chhattisgarh and Jharkhand
4
MINISTERS FROM STATE LEGISLATURE:
Usually members of the state legislature (assembly or council)
Non-members can be appointed but must join the legislature within six months
5
RIGHTS OF MINISTERS IN LEGISLATURE:
Can speak and participate in both Houses
Voting rights only in the House that they are a member of

Fig. 17.6: Appointment Provisions Related to Ministers

Oath and Salaries of the Ministers

Categories of Powers	Related Details
Office Oath (Administered by Governor)	❑ To bear true faith and allegiance to the Constitution of India, ❑ To uphold the sovereignty and integrity of India, ❑ To faithfully and conscientiously discharge the duties of his office, ❑ To do right to all manner of people in accordance with the Constitution and the law, without fear or favour, affection or ill-will.
Oath of Secrecy	❑ To not reveal any confidential information known as a state minister, except as required for duty.
Salary and Allowances	❑ Determined by the state legislature
Basic Salary	❑ As payable to a member of the state legislature
Additional Allowances	❑ Sumptuary allowance (based on rank), Free accommodation, Travelling allowance, Medical facilities

Composition of the State Council of Ministers

The **Constitution doesn't specify the size or ranking of Ministers in a state**, but the **Chief Minister determines this based on the current needs and situation**.

There are **three main categories of Ministers**:

- **Cabinet Ministers**: These are senior Ministers who head important departments like Home, Education, Finance, and Agriculture. They attend Cabinet meetings and play a key role in policymaking and overseeing broad areas of state governance.
- **Ministers of State**: These Ministers may have independent charge of smaller departments or be

attached to Cabinet Ministers as assistants. They only attend Cabinet meetings when invited for discussions related to their specific departments.

- **Deputy Ministers**: They assist Cabinet Ministers in administrative, political, and parliamentary duties but don't have independent departmental charge. They are not members of the Cabinet and don't attend Cabinet meetings.

In addition to these categories, Deputy Chief Ministers may be appointed for local political reasons and may be included in the Council of Ministers, depending on the situation.

Provisions Related to the Responsibility of Ministers

Responsibility of Minister:

- **Collective Responsibility**
  - **Article 164:** Council of ministers collectively responsible to the legislative assembly.
  - Joint responsibility for acts of omission and commission.
  - Must resign if no-confidence motion passed.
  - Can advise Governor to dissolve assembly and call elections.
  - Cabinet decisions bind all ministers.
  - Ministers must support Cabinet decisions or resign.
- **Individual Responsibility:**
  - **Article 164:** Ministers hold office at Governor's pleasure.
  - Governor can remove Ministers on Chief minister's advice.
  - Chief Minister can ask a Minister to resign for disagreement or poor performance.
- **No Legal Responsibility:**
  - No constitutional provision for legal responsibility of Ministers in states.
  - Governor's orders for public acts need not be countersigned by Ministers.
  - Courts cannot inquire into Ministers' advice to Governor.

The State Cabinet

- The Cabinet is a pivotal segment of the Council of Ministers, exclusively composed of Cabinet ministers within the state government.
- Led by the Chief Minister, the Cabinet holds significant authority and influence, focusing on key policy matters and state administration.
- Cabinet ministers, each heading specific departments like finance or education, contribute their expertise to informed decision-making.
- The Cabinet goes beyond policy formulation, actively participating in the implementation of government policies and ensuring effective execution.
- Regular or as-needed Cabinet meetings are essential for addressing pressing state issues, strategizing on legislative matters, and coordinating departmental efforts.
- The Chief Minister orchestrates Cabinet activities, setting agendas for meetings and guiding the decision-making process.
- Collective responsibility is a fundamental principle in the Cabinet, making decisions binding on all members, regardless of initial differing opinions.
- This commitment to collective decision-making ensures unity and presents a consistent governmental front, reinforcing the state government's ability to address challenges cohesively.

Multiple Functions Performed by the Cabinet

Various Roles of the Cabinet	Highest Decision-Making Authority	----→	In politico-administrative system of a state
	Chief policy formulation body	----→	Of the state government
	Supreme executive authority	----→	Of the state government
	Chief coordinator	----→	Of state administration
	Advisory Body	----→	To the governor
	Chief Crisis Manager	----→	Deals with emergency situation
	Legislative and Financial Matters	----→	Handles major legislative and financial issues
	Control Over Appointments	----→	Influences constitutional authorities and senior secretariat administrators

Cabinet Committees

Cabinet Committees at the state level play a crucial role in the decision-making process. These committees are typically constituted by the Chief Minister and consist of key ministers from the state cabinet. The purpose of forming these committees is to facilitate efficient governance by distributing responsibilities and focusing on specific areas of administration. While the specific names and functions of the committees can vary from state to state, there are some common themes and purposes that are often addressed. **These are:**

- **Decision-Making:** Cabinet Committees are responsible for making decisions on important policy matters, governance issues, and other key areas. They act as forums for discussion and deliberation among senior ministers.
- **Task-specific Committees:** Committees are often formed to address specific issues or sectors such as finance, law and order, infrastructure, social welfare, etc. Each committee is tasked with overseeing and providing input on matters related to its designated area.
- **Coordination and Collaboration:** The committees serve as a platform for coordination and collaboration among different departments and ministries. This helps in streamlining efforts and ensuring a cohesive approach to governance.

IGNITE YOUR MIND

Although, Cabinet committees are extra-constitutional bodies but they are all powerful. Often, the decisions taken by them are final and do not need a stamp of approval of the full cabinet. Imagine you are advising a Chief Minister on forming a new Cabinet Committee to address a pressing issue in the state. What factors would you consider in designing the committees structure and composition for effective strategic decision-making?

- **Policy Formulation:** Cabinet Committees are instrumental in formulating and reviewing policies related to various aspects of governance. This includes economic policies, social welfare programs, and development initiatives.
- **Crisis Management:** In times of crisis, such as natural disasters or emergencies, special committees may be formed to address the situation promptly. These committees focus on crisis management, relief operations, and rehabilitation efforts.
- **Inter-State Relations:** In states with complex inter-state relationships, committees may be formed to address issues related to border disputes, water-sharing agreements, and other matters that require collaboration with neighboring states.
- **Budget and Finance:** Some states have committees specifically dedicated to financial matters, including budget formulation, fiscal policies, and economic planning.
- **Monitoring and Evaluation:** Committees may also be responsible for monitoring the implementation of various government schemes and projects, ensuring that they are progressing as planned.

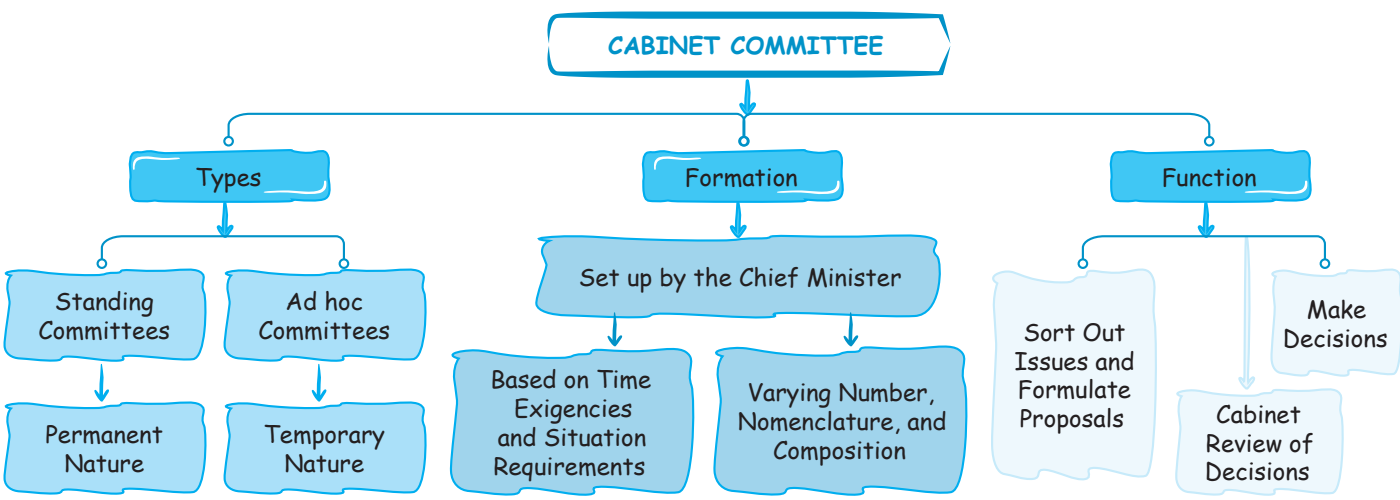


Fig. 17.7: Cabinet Committee

Similarities in Chief Minister and Prime Minister at the Union and the State Level

Particulars	Union	State
Appointment	**Prime Minister**	**Chief Minister**
Appointing Authority	President	Governor
Advice for Appointments of Council of Minister	Prime Minister	Chief Minister
Membership	Lok Sabha or Rajya Sabha	Legislative Assembly or Legislative Council
Oath of Office and Secrecy	Administered by President	Administered by Governor
Chief Executive	Prime Minister (real), President (nominal)	Chief Minister (real), Governor (nominal)
Policy Coordination and Department Supervision	Prime Minister	Chief Minister
Communication with Head of State	Prime Minister to President	Chief Minister to Governor
Ministerial Appointments and Portfolio Allocation	Prime Minister decides, advises President	Chief Minister decides, advises Governor
Dissolution of Council of Ministers	Prime Minister's death/resignation	Chief Minister's death/resignation
Filling Vacancies	New Prime Minister and Council sworn-in	New Chief Minister and Council sworn-in
Individual Minister's Death/Resignation	Creates vacancy only, filled by new appointment	Creates vacancy only, filled by new appointment

- The **Prime Minister and Chief Minister share similar responsibilities** within their **respective jurisdictions**. Both roles **involve communicating decisions** and information to the President and Governor, respectively, regarding government administration and proposed legislation.
- They provide requested information and submit matters for council consideration.
- They propose laws, lead ministers, and oversee administration.
- They represent government nationally and internationally, and lead the majority party in legislature.
- They may hold extra ministerial portfolios.

Advocate General of State

The Indian Constitution, under **Article 165,** establishes the office of the Advocate General for each state. This role is the **highest legal authority within a state, similar** to that of **Attorney General at the national level.** Although the **post of advocate general of the state is constitutional,** in the official precedence, he is **ranked below the solicitor general of India which is merely a statutory post.**

Appointment and Tenure Related Provisions of Advocate General

The Advocate General is a crucial legal advisor to a state government in India. The appointment, tenure, and related provisions for the Advocate General are outlined in the Constitution of India.

Appointment

- **Authority for Appointment:** The Advocate General is appointed by the Governor of the respective states.
- **Qualifications:** As per the Constitution, a person who is qualified to be appointed as a Judge of a High Court is eligible to be appointed as an Advocate General.

Tenure

- **No Fixed Tenure:** The Constitution does not specify a fixed tenure for the Advocate General.
- **Service at the Governor's Pleasure:** The Advocate General holds office during the pleasure of the Governor. This means the Governor can remove the Advocate General at any time without providing any reason.
- **Practical Tenure:** Typically, the tenure of the Advocate General is co-terminus with the tenure of the government

that appoints them. They often resign when a new government comes to power, although this is based on convention rather than a constitutional mandate.

Duties and Responsibilities

- **Legal Advisor:** The primary role of the Advocate General is to advise the state government on legal matters.
- **Representation in Courts:** They represent the state government in legal proceedings in the High Court and sometimes in the Supreme Court.
- **Right to Attend Legislature:** The Advocate General has the right to speak and to take part in the proceedings of the state legislature, though without a right to vote.

Removal

- As mentioned, the Advocate General serves at the pleasure of the Governor and can be removed by the Governor at any time.
- There is no formal process for removal, unlike judges, whose removal requires a more structured process.

Duties and Functions Related to Advocate General

Role of Advocate General						
Duties (Article 165)			Right and Privileges			
Advise the state government	---→	On legal matters referred by governor	1.	Appear in any state court		
Perform legal duties	---→	As assigned by governor	2.	Participate in state legislature (Article 177)	---→	• Speak and take part in proceedings • In both houses or any committee • No voting rights
Discharge functions	---→	As assigned by constitution or other laws	3.	Privileges and immunities		Same as state legislature member

Constraints on the Role of the State's Advocate General

Certain constraints exist that impede the Advocate General's capacity to address conflicts of interest and other issues effectively such as:

- The Advocate General is barred from offering counsel or representing government officials from the State Government. They are also prohibited from providing guidance or acting as witnesses in situations where their advice or appearance is sought by the State Government.
- Approval from the State Government is mandatory for the Advocate General to advocate for the accused in criminal proceedings. This emphasizes the importance of official authorization in such legal matters.
- Furthermore, the Advocate General is restricted from assuming the role of a director in any business or organization without obtaining prior approval from the State Government. This stipulation aims to maintain a clear distinction between their legal responsibilities and external affiliations.

- In the **structure of the State Executive,** key members include the Governors, the Chief Minister, the Council of Ministers, and the State's Advocate General. Article 165 in Part VI (The States) of the Constitution of India, under Chapter 2 (The Executive), outlines the role of the Advocate General of the States.
- This individual holds the highest legal position in the state. Collaborating with the Attorney General for India at the Centre, the State Advocate General plays a crucial role in the day-to-day operations of state governments in India's federal system.
- Essentially, **Article 165 delineates the responsibilities and position of the Advocate General in India,** whose office shares similar roles and objectives with the country's **Attorney General.**

Judgement:

Joginder Singh Wasu vs. State of Punjab

Supreme Court of India taking into account the Article 177 has held that:

- The Office of Advocate General is an exalted one. He is the Supreme law officer of the State.
- "Under Article 177 he is conferred with the right to an audience before the Legislature of a State both in the Assembly and the Council. Infact, he is treated on par with the Minister."

Differences Between the Attorney General of India and the Advocate General of a State

Aspect	Attorney General of India	Advocate General of a State
Constitutional Reference	Article 76 of the Indian Constitution.	Article 165 of the Indian Constitution.
Appointment	Appointed by the President of India.	Appointed by the Governor of the state.
Qualifications	Must be qualified to be a Judge of the Supreme Court.	Must be qualified to be a Judge of the High Court.
Role	Chief legal advisor to the Government of India; Represents the government in legal matters in the Supreme Court.	Chief legal advisor to the State Government; Represents the state government in legal matters in the High Court.
Participation in Legislature	Has the right to speak and to take part in the proceedings of both Houses of Parliament, but cannot vote.	Has the right to speak and to take part in the proceedings of both Houses of the State Legislature, but cannot vote.
Tenure	Not fixed by the Constitution; holds office during the pleasure of the President.	Not fixed by the Constitution; holds office during the pleasure of the Governor.
Jurisdiction	Represents the central government in all legal matters; can practice in any court in India.	Usually represents the state government in legal matters within the state; jurisdiction typically limited to the state.
Independence and Impartiality	Expected to be impartial; however, appointed by and serves at the pleasure of the President.	Expected to be impartial; however, appointed by and serves at the pleasure of the Governor.

- The Advocate General is essential in ensuring legal compliance and upholding constitutional values at the state level. While their role is clearly defined, their effectiveness may be influenced by the political landscape, given their appointment and tenure are at the Governor's discretion.

CONCLUSION

In India, the balance of power between the state executive and the legislature is defined by the Constitution, which provides a framework of federalism with a clear demarcation of powers and responsibilities. The role and powers of the state executive are designed to ensure a balance between state autonomy and the integrity of the federal structure.

IGNITE YOUR MIND

Do you think the Advocate General of a State can be immune from the political ideologies of the government? What are the challenges you think Advocate General faces in balancing legal advice with political considerations? How can the Advocate General navigate the intersection of legal principles and political realities in advising the state government?

Important Articles related to Governor

Article	Description
153	Every state shall have a Governor appointed by the President.
154	The executive power of the state shall be vested in the Governor and exercised by him either directly or through officers subordinate to him/her.
155	The Governor shall be appointed by the President by warrant under his hand and seal.
156	The Governor shall hold office during the pleasure of the President and for a term of five years unless he resigns earlier.
157	The qualifications for appointment as Governor are: he/she must be a citizen of India, he/she must have completed the age of 35 years, he must not hold any office of profit under the Union or any state, and he/she must not be a member of either House of Parliament or any state legislature.

Article	Description
158	The conditions of Governor's office are: he/she shall not be a member of either the House of Parliament or any state legislature, he/she shall not hold any other office of profit, he/she shall be entitled to such emoluments, allowances and privileges as determined by Parliament by law, and his/her emoluments and allowances shall not be diminished during his term of office.
159	The Governor shall, before entering upon his office, make and subscribe an oath or affirmation in the presence of the Chief Justice of the High Court of the state or any other judge of that court designated by him/her.
160	The President may make such provision as he thinks fit for the discharge of the functions of the Governor in any contingency not provided for in the Constitution.
161	The Governor shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the state extends.
162	The executive power of the state shall extend to the matters with respect to which the state legislature has power to make laws, subject to the provisions of the Constitution and any law made by Parliament.
163	There shall be a Council of Ministers with the Chief Minister as the head to aid and advise the Governor in the exercise of his functions, except in so far as he is required to exercise his functions in his discretion.
164	The Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister, and the Ministers shall hold office during the pleasure of the Governor.
165	There shall be an Advocate General for the state who shall be appointed by the Governor and who shall hold office during his pleasure.
166	All executive actions of the state shall be expressed to be taken in the name of the Governor and all orders and instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified by rules made by the Governor.
167	It shall be the duty of the Chief Minister to communicate to the Governor all decisions of the Council of Ministers relating to the administration of the affairs of the state and proposals for legislation and to furnish such information relating to the administration of the affairs of the state and proposals for legislation as the Governor may call for.

Parliament

18

INTRODUCTION

The **Parliament**, the supreme legislative organ of the Union Government of India, plays a **pivotal role** in **shaping the democratic ethos of the nation**. Intricately designed, its composition and functions are enshrined within the Constitution, illuminating the essence of democracy.

Encompassed within **Part V** of the Constitution, **Articles 79 to 122** lay down the detailed provisions pertaining to the Parliament. Under the Article 79 of the Constitution, the Parliament of India consists of three parts viz. **the President, the Council of States (Rajya Sabha), and the House of the People (Lok Sabha)**.

Structure of the Indian Parliament

It comprises **three parts** (as per **Article 79** of the Indian Constitution)

In **1954**, the **Council of States and the House of the People** adopted **Hindi names: 'Rajya Sabha' and 'Lok Sabha'** respectively. The **change symbolized India's cultural pride post-independence**. It reflects the nation's democratic will.

Role of the President vis-a-vis Parliament:

- **Constitutional Duties:** The President's constitutional duties in relation to Parliament include **summoning (Article 85), prorogation, dissolution of Lok Sabha,** and **delivering an annual address** to both Houses.
- **Symbolic and Practical Significance:** The President holds both **symbolic and tangible importance** in the legislative process. No bill can become law without the President's approval.
- **Communication and Recommendations:** The President, though not a member of either House, communicates messages, recommends certain Bills, and has the power to issue Ordinances when Parliament is not in session **(Article 123 - Power to issue ordinances).**
- **Disqualification Matters:** The President also decides on disqualification matters of Member of Parliament, guided by the advice of the Election Commission **(Article 103).**

The Rajya Sabha: A Federal Character with Unique Representation (Article 80)

The structure and composition of any country's legislative assembly reflects its inherent democratic principles and values. The Rajya Sabha often referred to as the **'Council of States',** plays a **pivotal role** in **representing** both the **territorial regions and expertise from various fields.**

Strength:

- **Article 80(1)** of the Constitution lays down the maximum strength of **Rajya Sabha as 250,** out of which 12 members are nominated by the President and 238 are representatives of the States and of the three Union Territories.
- These **members are not directly elected by the general populace**; instead, they are **chosen indirectly through a designated electoral process**. Additionally, **12 members** of this assembly are **nominated by the President of India**.
- The current composition of Rajya Sabha, is **245**, out of which **233 are representatives of the States and Union territories of Delhi, Puducherry and Jammu and Kashmir (effective from 31.10.2019)** and **remaining 12 are nominated by the President.**

Seat Distribution: In its **Fourth Schedule**, the Constitution delineates the allocation of seats to various states and union territories in the Rajya Sabha. All the seats from Jammu Kashmir are vacant since legislative assembly was dissolved there.

This allocation is pivotal in understanding the representation dynamics:

- **State Representation in Rajya Sabha:**
  - The representatives of states in the Rajya Sabha are elected by the elected members of the state legislative assemblies in accordance with the **system**

of proportional representation by single transferable vote, **seat allocation** is based on the population size of the state. Uttar Pradesh has 31 seats; Tripura has 1. In the USA, all states have equal Senate representation (2 per state, Total 100 members).

- **Representation of Union Territories:**
  - The representatives of the Union territories in the Council of States are chosen in such a manner **as Parliament may, by law, prescribe**. Part IVA of the **Representation of the People Act, 1950**, provides for the **manner of filling seats in the Rajya Sabha** allocated to Union territories. **Section 27A** of that Act provides that for the purpose of filling any seat or seats in the Council of States allotted to any Union territory in the Fourth Schedule to the Constitution, there shall be an **electoral college for each such territory**.

- Prior to the enactment of the Government of **National Capital Territory of Delhi Act, 1991,** the electoral college for the Union territory of Delhi consisted of the elected members of the Metropolitan Council of Delhi constituted under the Delhi Administration Act, 1966 (19 of 1966). The electoral college for the Union territory of Delhi now consists of the elected members of the Delhi Legislative Assembly constituted under the Government of National Capital Territory of Delhi Act, 1991.
- The electoral college for the Union territory of Puducherry consists of the elected members of the Puducherry Legislative Assembly constituted under the **Government of Union Territory Act, 1963**. The Union territories of Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli, Daman and Diu and Chandigarh do not have any representatives in the Rajya Sabha.

- **Nominated Members:**
  - Unlike the USA's Senate, the Rajya Sabha has nominated members. Article 80(3) provides that 12 members nominated by the President shall consist of persons having special knowledge or practical experience in respect of such matters as literature, science, art and social service.

The Lok Sabha: A Deep Dive into the Composition of India's House of the People (Article 81)

- As per the provision of **Article 79** of Indian constitution, the **House of the people, the Lok Sabha is the lower House of the Parliament**. Lok Sabha is composed of representatives of the people chosen by direct election on the basis of the adult suffrage.
- The **maximum strength** of the house envisaged by the **Constitution is 552** (now **550 after termination of reserved seat of anglo-indians by 104th Constitutional Amendment Act**, passed in January 2020 also extended the reservation of seats for Scheduled Castes (SCs) and Scheduled Tribes (STs) in the Lok Sabha and State Assemblies for another ten years, until January 25, 2030.
- **Out of 550** this, **530 members** are to be the **representatives of the states** and 20 members are to be the representatives of the union territories.
- At present, the Lok Sabha has **543 members**. Of these, 524 members represent the states and 19 members represent the union territories.

Delving into the Specifics of this Composition:

- **State Representation in Lok Sabha:**
  - Citizens from constituencies of all states aged 18+ have universal adult franchise to elect representatives from territorial constituencies within states directly**. 61st Constitutional Amendment Act, 1988** reduced the **voting age from 21 to 18.**
- **Union Territories' Representation:**
  - Parliament outlined selection procedures for union territories' Lok Sabha representatives via the Union Territories (Direct Election to the House of the People) Act in 1965, ensuring their direct election.
- **Nominated Members:**
  - Before 2020, the President nominated two members from the **Anglo-Indian community** to the Lok Sabha, if the community was not adequately represented. Originally, this provision was to operate for ten years (ie., upto 1960) only. Later, this duration has been extended continuously since then by ten years each time. The last extension upto 2020 was made by the **95th Amendment Act, 2009**.
  - But, the **104th Amendment Act, 2019**, has **not further extended** the operation of this provision. In other words, the Amendment discontinued this provision of special representation of the Anglo-Indian community in the Lok Sabha by nomination. Consequently, this provision ceased to have effect on the **25th January, 2020.**

Election System for Lok Sabha: A Complex Yet Equitable Process

The different facets associated with the system of elections to the Lok Sabha are outlined as follows:

- Elections in the Lok Sabha focus on democratic principles and representation of the population.
- Territorial Constituencies form the basis of these elections, with each state being divided into such constituencies for direct Lok Sabha elections.

- The Indian **Constitution emphasizes uniform representation** using two key provisions. **(Article 81(2))**
  - States are allocated seats in such a manner that the ratio of number of allocated seats with the population of the state remains uniform among the states. This provision is not applicable to states with a population of less than six million.
  - Territorial constituencies within states maintain a consistent population-to-seat ratio, ensuring fairness in representation.
  - The **expression population** refers to population as ascertained at the preceding census of which the relevant figures have been published.

Post-Census Readjustment of seats for the Lok Sabha (Article 82)

- This process is mandated after every census, which guarantees that demographic shifts and population changes are duly reflected in the country's Parliamentary representation.
- The Parliament holds the power to determine both the authority and manner in which these readjustments are executed. **To operationalize this, a series of Delimitation Commission Acts have been enacted in 1952, 1962, 1972, and 2002**, for this crucial process.

Freezing the readjustments:

- The **42nd Amendment Act 1976** froze both the allocation of seats in Lok Sabha and the division of each state into territorial constituencies till 2000 at 1971 level. **84th Amendment Act 2001**, further extended this **freeze till 2026**.
- The last delimitation commission for inter-state reallocation was set up in **1972**. The **number of seats in each state was frozen till 2026** so as to compensate the southern states that performed better in the family planning exercise.
  - In case it was continued every 10 years since then, the northern states, due to their larger populations would end up having excessively more seats in the Parliament than the southern states.
- The last delimitation commission for **intra-state redrawing** of boundaries among constituencies within a state was set up in **2002**, which submitted its report in 2008.
- The **87th Amendment Act of 2003** mandated the delimitation of constituencies **based on the 2001 census data**, signifying a transition to more current and precise demographic parameters. Notably, this adjustment did not alter the number of seats allotted to each state in the Lok Sabha.
- As the **exercise has been frozen till 2026 (84th amendment act of 2001)**, hence the next commission will be set up based on the first census published after 2026.

- The Delimitation Commission of 2002, left out a few states including Assam, Arunachal Pradesh, Nagaland and Manipur from the exercise due to "security risks" and Jammu & Kashmir as well.
- It did not make any changes in total Lok Sabha seats or their apportionment between various states.

Reservation of Seats for Scheduled Castes and Scheduled Tribes in Lok Sabha

India's dynamic political landscape is underpinned by a commitment to inclusive representation, embodying the principles of social justice and equity. One pivotal facet of this commitment is the reservation of seats for Scheduled Castes (SCs) and Scheduled Tribes (STs) in the Lok Sabha as mentioned in **Article 334.**

- **Initial Timeline:** Initially, this reservation was envisioned to last a decade, concluding in 1960.
- **Extension Over Time:** However, this timeline has been extended in successive decades, highlighting its enduring relevance. The latest extension was made in 2019 by the **104th Constitutional Amendment Act** and is valid up to 2030. This underscores the importance of reservation as a policy.
- **No Barriers**: Individuals from SCs and STs can also contest general (non-reserved) seats, promoting flexibility in political participation.

- The **87th Amendment Act of 2003** mandated revision based on the **2001 census data.**
- **Total Seat Allocation Unchanged:** Notably, these adjustments did not alter the overall seat allocation, preserving representation principles.

First-Past the Post System in India:

While the Constitution has embraced the **proportional representation system for the Rajya Sabha**, it has opted for the system of territorial representation, with the **first-past-the-post system,** for the election of Lok Sabha members.

In territorial representation, each legislator represents a specific geographical area, known as constituency. Only one representative is elected from each constituency, making it a single-member constituency. In this system, the **candidate who receives the majority of votes in a constituency is declared the winner**. However, this simple majority system does not fully represent the entire electorate and may not ensure adequate representation for minority groups.

To address the limitations of territorial representation, the **proportional representation system aims to provide a more inclusive representation**. Under this system, **all segments of the population receive representation proportionate to their numbers.** This ensures that even the smallest sections of the population have a fair share of representation in the legislature.

First-past the post system in Lok Sabha has limitations:

- **It promotes two-party dominance,** often marginalizing smaller parties and diverse political perspectives.
- It can lead to unrepresentative results where the winning party secures power without majority support.
- **It encourages tactical voting**, where voters choose the less undesirable option instead of preferred candidates.
- **It can create regional disparities**, with parties winning large majorities in certain areas but minimal elsewhere.

Proportional Representation (A Remedial Approach)

Proportional representation encompasses two distinct variants: the **single transferable vote system and the list system**. In India, the single transferable vote system finds application in various contexts, including Rajya Sabha and state legislative councils, as well as in the election of the President and the Vice-President.

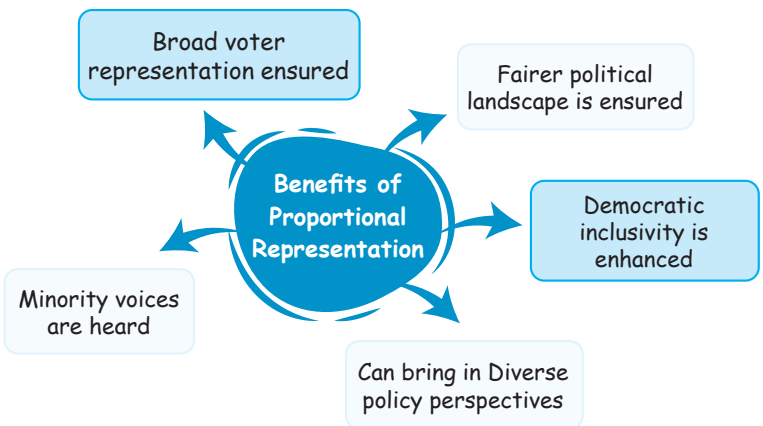

Broad voter representation ensured
Fairer political landscape is ensured
Benefits of Proportional Representation
Democratic inclusivity is enhanced
Minority voices are heard
Can bring in Diverse policy perspectives

Fig. 18.3: Benefits of Proportional Representation

Limitation of Proportional Representation

While some members of the Constituent Assembly proposed the use of proportional representation for Lok Sabha elections, the Constitution ultimately did not adopt this system for two main reasons:

- **Complexity and Low Literacy:** The system was considered intricate, and posed a challenge for voters to comprehend, especially given the country's low literacy levels.
- **Unsuitability for Parliamentary Government:** The proportional representation system had the tendency to give rise to multiple political parties, potentially leading to governmental instability. This was deemed unsuitable for the Parliamentary government structure.
- **High Cost:** The system is notably expensive to implement.
- **Lack of Scope for By-Elections:** It does not allow for the organization of by-elections.
- **Reduced Voter-Representative Interaction:** Proportional representation eliminates intimate contacts between voters and their representatives.
- **Promotion of Minority Thinking:** The system tends to promote minority thinking and group interests.
- **Shift in Party System Significance:** It increases the importance of the party system while decreasing the significance of individual voters.

Duration of the Two Houses (Article 83)

Duration of Rajya Sabha (Article 83(1))

- Rajya Sabha is a **permanent chamber** of Indian Parliament. However, **one-third of its members retire every second year.**
- For the first Rajya Sabha, the members who would retire after two years were decided by a draw of lots.
  - Fresh elections and Presidential nominations occur at the beginning of every third year to replace the retiring members.
  - Retiring members can be re-elected and renominated multiple times.
- Unlike Lok Sabha's fixed five-year term, **Rajya Sabha members' tenure is not fixed by the Constitution and left it under the domain of the Parliament**.
  - The **Representation of the People Act of 1951** sets a six-year term for Rajya Sabha members.

Duration of Lok Sabha (Article 83(2))

Aspect	Details
Duration	❑ Lok Sabha's term is five years from the date of its first meeting after the general elections.
Automatic Dissolution	❑ Lok Sabha dissolves automatically at the end of its five-year term. After this, fresh elections are to be constituted.
Presidential Dissolution Authority	❑ The President can dissolve the Lok Sabha before its five-year term expires on recommendation of the Council of Ministers.
Extension During Emergencies	❑ Parliament can pass a law to extend Lok Sabha's term during national emergencies. Extensions can be granted for one year each and renewed as needed.
Time Limitation	❑ Extended term cannot exceed six months after the conclusion of the national emergency.
Balancing Act	❑ This approach balances adaptability during emergencies with democratic principles in the Constitution.

The Membership of Parliament

Qualifications for being a Member of Parliament (Article 84)

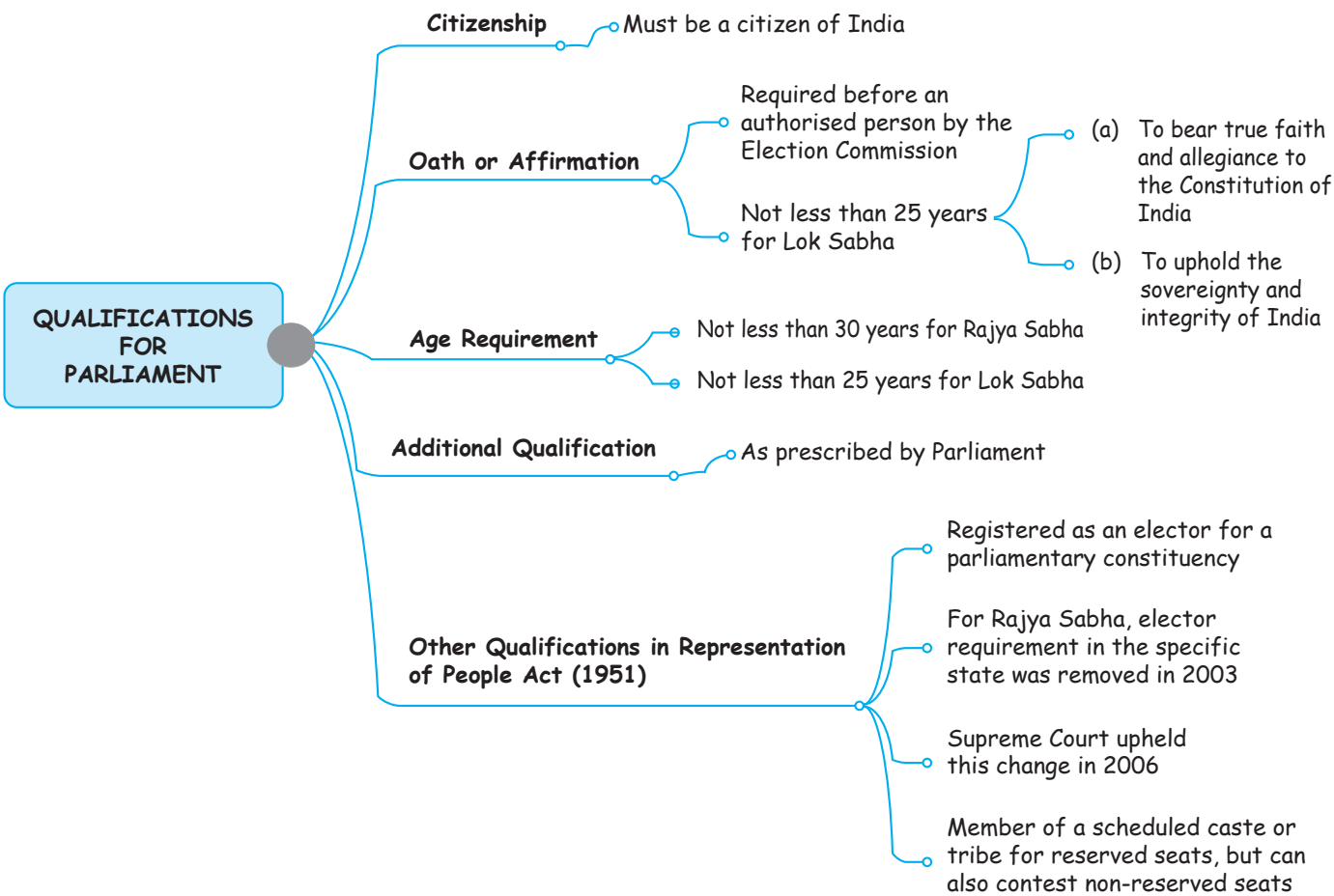

QUALIFICATIONS FOR PARLIAMENT
Citizenship
Must be a citizen of India
Oath or Affirmation
Required before an authorised person by the Election Commission
Not less than 25 years for Lok Sabha
(a) To bear true faith and allegiance to the Constitution of India
(b) To uphold the sovereignty and integrity of India
Age Requirement
Not less than 30 years for Rajya Sabha
Not less than 25 years for Lok Sabha
Additional Qualification
As prescribed by Parliament
Other Qualifications in Representation of People Act (1951)
Registered as an elector for a parliamentary constituency
For Rajya Sabha, elector requirement in the specific state was removed in 2003
Supreme Court upheld this change in 2006
Member of a scheduled caste or tribe for reserved seats, but can also contest non-reserved seats

Fig. 18.4: The Membership of Parliament

Provisions Related to Disqualification of Members from Parliament

The Indian Constitution clearly defines both the qualifications and disqualifications for Parliamentary membership to ensure that the legislators meet strict standards of integrity and legality, protecting the legislative body's sanctity.

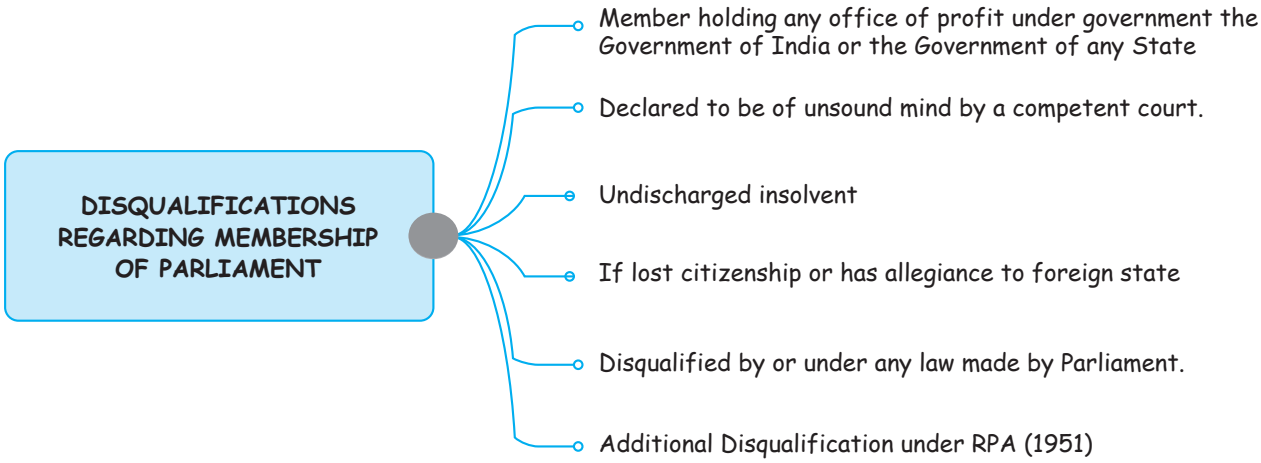

DISQUALIFICATIONS REGARDING MEMBERSHIP OF PARLIAMENT
Member holding any office of profit under government the Government of India or the Government of any State
Declared to be of unsound mind by a competent court.
Undischarged insolvent
If lost citizenship or has allegiance to foreign state
Disqualified by or under any law made by Parliament.
Additional Disqualification under RPA (1951)

Fig. 18.5: Disqualifications Provisions Regarding Membership of Parliament

Constitutional provisions (Article 102(1) of the Indian Constitution) for disqualification of members from the House:

As per Representation of People Act, 1951:

Section	Grounds of Disqualification	Period of Disqualification
8	❑ **Conviction for certain offences under the Indian Penal Code**, the Civil Rights Act, the Religious Institutions (Prevention of Misuse) Act, the Dowry Prohibition Act, the Commission of Sati (Prevention) Act, the Prevention of Insults to National Honour Act, the Customs Act, the Foreign Exchange (Regulation) Act, the Terrorist and Disruptive Activities (Prevention) Act, the Prevention of Corruption Act, etc.	Six years from the date of conviction or release from prison, whichever is later.
8A	❑ Disqualification on **ground of corrupt practices** such as bribery, undue influence, personation, false statement, etc.	As determined by the President, not exceeding six years.
9	❑ Disqualification for dismissal for **corruption or disloyalty to the state while holding an office under the Government** of India or a State.	Five years from the date of dismissal.
9A	❑ Disqualification for Government contracts, such as any share or interest in a contract for the supply of goods or services to the Government or any local authority.	Until the contract is terminated or the share or interest is divested.
10	❑ Disqualification for office under Government company, such as being a managing agent, manager or secretary of any company or corporation in which the Government has not less than 25% share.	Until he ceases to hold such office or position.
10A	❑ Disqualification for failure to lodge account of election expenses within the time and in the manner prescribed by law.	Three years from the date of the order of the Election Commission.
11A	❑ Disqualification arising out of conviction and corrupt practices for voting.	As determined by the President, not exceeding five years.

- The **deciding authority** regarding the **disqualification of the member** under such matters from the house is the **President and his his/her decision is final**. However, the President should obtain the opinion of the Election Commission of India and act accordingly.

IGNITE YOUR MIND

Free and fair election is the *sine qua non* of democracy. In the context of India, they are even termed as the 'Dance of the Democracy'. Following its mandate, under Articles 324-329, Parliament has enacted the Representation of People Act, 1950 (RPA,1950) and Representation of People Act, 1951 (RPA,1951). How can we ensure these two Acts complement each other effectively and remain relevant in the context of evolving electoral challenges and democratic aspirations?

Disqualification of Members on Grounds of Defection: Tenth Schedule

The Constitution states that a person can be disqualified from being a Member of Parliament if they **he/she violates the anti-defection provisions** in the **Tenth Schedule**. The tenth schedule was added by the **52nd Constitutional Amendment Act, 1985.**

Disqualification occurs when:

- A member **willingly gives up the membership of the political party** on whose ticket they were elected.
- A member **votes or abstains from voting against the** direction given by their political party.
- An **independently** elected member **joins any political party.**
- A **nominated member** joins any **political party after six months** from their nomination.

The decision on disqualification under the Tenth Schedule is made by the **Chairman in the case of Rajya Sabha and the Speaker** in the case of Lok Sabha, not by the President of India.

Speaker's Role in Defection

- The Supreme Court, in the **Kihoto Hollohan case (1992)**, clarified that the decision of the Chairman/Speaker is subject to judicial review on the grounds of mala fide, violation of constitutional mandate, non-compliance with the rules of natural justice.
- In the **K M Singh vs Manipur Speaker case of 2020**, the Supreme Court recommended a crucial amendment to the Tenth Schedule. The suggestion proposed that instead of leaving the responsibility of adjudicating Tenth Schedule disqualifications solely to the Speaker, **a tribunal headed by a judge should be established.** This shift aimed to prevent any partisan behavior and ensure a fair and unbiased process.
- Additionally, the Supreme Court in emphasized the importance of timely decisions, stating that the Speaker should resolve any petition for disqualification within a reasonable timeframe. Unless there are exceptional circumstances, the directive specified that the Speaker should aim to reach a decision within three months. This recommendation sought to enhance the efficiency and impartiality of the disqualification process.
- The debates over the Speaker's discretion have been a subject of discussion, and the **All India Presiding Officer's Conference in 2021-22** emphasized the importance of maintaining the Speaker's dignity in the disqualification process. Proposals and discussions have emerged, suggesting ways to limit the Speaker's role, including the delegation of disqualification decisions to political parties.

In conclusion, recognizing the Speaker's role in ensuring government stability and integrity, there is a growing consensus on the need for fair and impartial decision-making. As discussions continue, the focus remains on refining the system to address the complexities associated with defection cases and uphold the principles of democracy.

Office of Profit

The Constitution and the Representation of People's Act 1951 doesn't clearly define the term. The definition has been derived from various court judgements.

An **"Office of Profit"** refers to positions held by Members of Parliament **(MPs) or** Members of the Legislative Assembly (MLAs) **that may provide financial gain or benefit.**

Origin and Development: The concept comes from the **English Act of Settlement, 1701**, and its definition has evolved through court judgments.

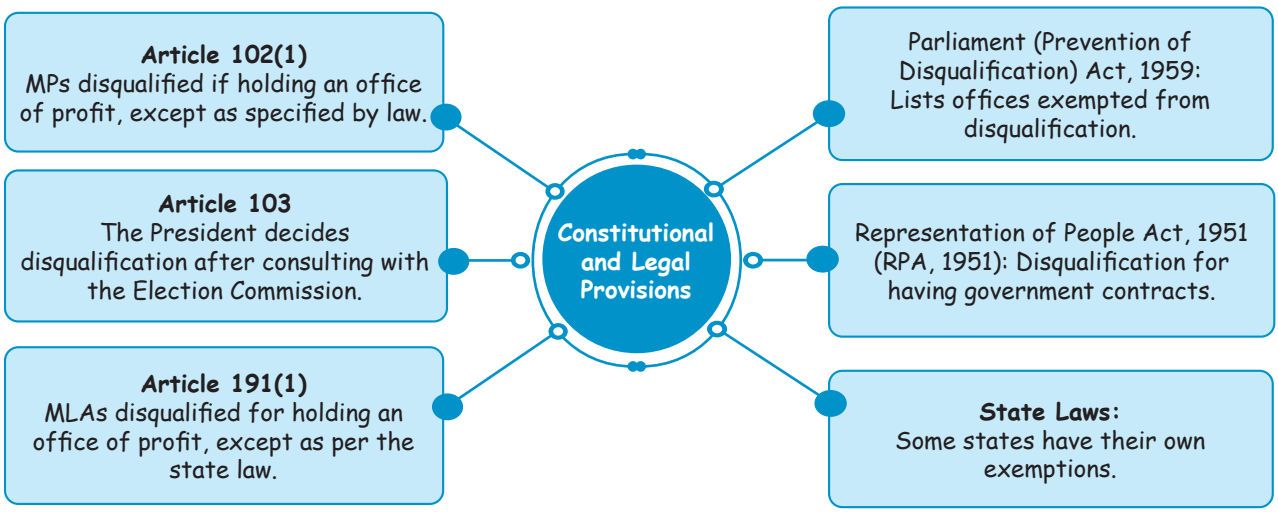

Article 102(1)
MPs disqualified if holding an office of profit, except as specified by law.
Article 103
The President decides disqualification after consulting with the Election Commission.
Article 191(1)
MLAs disqualified for holding an office of profit, except as per the state law.
Constitutional and Legal Provisions
Parliament (Prevention of Disqualification) Act, 1959: Lists offices exempted from disqualification.
Representation of People Act, 1951 (RPA, 1951): Disqualification for having government contracts.
State Laws:
Some states have their own exemptions.

Fig. 18.6: Constitutional and Legal Provisions

Significance of 'Office of Profit' Disqualification:

- **Upholding Constitutional Responsibility**: It ensures that the MPs/MLAs fulfil their duties.
- **Preserving Separation of Powers:** It prevents undue influence by the executive over the legislature.
- **Maintaining Checks and Balances:** It safeguards democratic principles and prevents any branch of government from overstepping.
- **Preventing Conflicts of Interest**: It ensures elected members can perform their duties independently without external pressures.

Recent Example of Office of Profit:

- A notice has been sent by the Election Commission of India to the CM of Jharkhand for holding the office of profit as he granted a mining lease to himself in 2021.
- 20 MLAs of the Delhi Legislative Assembly who were appointed as the parliamentary secretaries were disqualified by the President for holding the office of profit.

Key Tests to determine Office of Profit:

- **Appointment Test (1964):** The Supreme Court in **Ram Chandra Kesari v. Union of India** established the "appointment test" to determine whether an office constitutes an office of profit. This test focuses on the nature of the office itself, not the person holding it. If the office is created by an appointment, it is considered an office of profit.
- **Remuneration Test (1964):** The Court in **Ram Chandra Kesari v. Union of India** further clarified that an office of profit must carry some remuneration, whether fixed or variable. If the office does not provide any financial benefit to the holder, it is not an office of profit.
- **Independent Office Test (1970):** The Court in **Kultar Chand Rana v. Union of India** introduced the "independent office test" to distinguish between offices under the government and those merely incidental to it. An office must be independent of the holder's position as a member of Parliament or a state legislature to be considered an office of profit.
- **Potential Effect test (2006):** The Court in **Jaya Bachhan case** also held that the "potential effect test" should be applied to determine whether an office constitutes an office of profit. This test focuses on the potential for the office to influence the holder's performance of his or her duties as a member of Parliament.
- **Declaration by Legislature (2014):** The Court in **UC Raman case** acknowledged the power of Parliament and state legislatures to declare certain offices not to be offices of profit. This provision allows for flexibility in determining which offices should disqualify a member of Parliament or a state legislature.

Recommendations of 2nd ARC for addressing issues related to the office of profit:

- **Define it through the RPA,1951,** considering factors like remuneration and powers, and empowering the Election Commission to make determinations.
- It also recommended that all offices with executive decision-making powers and financial control be treated as an office of profit.

National Commission to Review the Working of the Constitution (NCWRC) made several recommendations regarding the Office of Profit, including:

- **Redefining the concept of Office of Profit:** The NCRWC recommended that the definition of office of profit be **narrowed to focus on offices that provide significant**

financial benefits or have a direct connection to the government. This would help to avoid disqualifying members of Parliament or State Legislatures for holding positions that do not pose a threat to their independence.

- **Clarifying the test for determining office of profit:** The NCRWC recommended that the Supreme Court's **"potential effect test"** be replaced with a more objective test. This new test would focus on the actual benefits and powers of the office, rather than on the potential for the office to influence the holder's performance as a lawmaker.
- **Exempting certain offices from disqualification:** The NCRWC recommended that certain offices be exempted from the office of profit disqualification, such as offices held by ministers, parliamentary secretaries, and members of committees.
- **Providing a mechanism for review of Office of Profit cases:** The NCRWC recommended that a mechanism be established for reviewing office of profit cases. This mechanism could be a panel of retired judges or a special tribunal.

The NCRWC's recommendations on the office of profit have been praised by some for providing a more balanced and practical approach to this issue. However, others have criticized the recommendations, arguing that they would weaken the office of profit doctrine and make it easier for members of Parliament or state legislatures to hold positions that conflict with their duties as lawmakers.

Provisions for Vacation of seats by a Member of Parliament (Article 101(1))

Cases in which seats are vacated	Description
Double Membership	❑ A person cannot be a member of both Houses of Parliament simultaneously. The Representation of People Act,1951 provides that vacancies occur if: ❑ Elected to both Houses - must choose one within 10 days. Failing to do so results in the automatic vacancy of their Rajya Sabha seat. ❑ Sitting member elected to the other House, his seat in the first House becomes vacant. ❑ Elected to two seats in one House - must choose one. If they do not make a choice, both seats will be declared vacant. ❑ Additionally, a person cannot simultaneously be a member of both the Parliament and a State legislature. If elected to both, they must resign from their position in the state legislature within 14 days, or their Parliamentary seat will be vacated.
Disqualification	❑ If a member becomes subject to disqualifications specified in the Constitution, the seat becomes vacant, including disqualification for defection under the 10th Schedule.
Resignation	❑ A member can resign by writing to the Chairman of Rajya Sabha or Speaker of Lok Sabha. The seat becomes vacant upon acceptance unless deemed involuntary.
Absence	❑ A seat can be declared vacant if a member is absent from all meetings of the house for 60 days without its permission. Excludes periods of prorogation or adjournment exceeding four consecutive days.
Other Cases	**Vacancies occur if:** ❑ The election is declared void by the court. ❑ He/she is expelled by the House. ❑ Elected as the President or the Vice-President. ❑ Appointed as the Governor of a state.

Oath/Affirmation of Members of Parliament

Difference Between Oath and Affirmation

An **oath is a solemn promise** which often invokes a divine witness regarding one's future action or behavior, traditionally seen as **a religious commitment**. Meanwhile, **an affirmation** serves the same legal purpose but is **secular,** chosen typically by individuals who prefer not to swear religiously due to personal beliefs or because they are conscientious objectors to taking religious oaths. Both are binding promises to uphold the duties of the office, but they cater to different belief systems to ensure inclusivity and respect for individual conscience within the frameworks of public service.

- **For example- Dr. Prasad**, known to be a deeply religious man **had taken an oath** as he used to believe in god

whereas **Dr. Jawaharlal Nehru** being **secular** had taken an affirmation not an oath solemnly affirming to fulfill all the duties. This way, the difference can be remembered. This denotes a culture of plurality and inclusiveness in India.

- New members of India's Parliament must take an oath or affirmation of allegiance before the President of India or a person appointed by him. **In his/her oath or affirmation a member pledges:**
  - To bear true faith and allegiance to the Constitution of India;
  - To uphold the sovereignty and integrity of India; and
  - To faithfully discharge the duty upon which he is about to enter.

If a member does not take this oath or affirmation, they cannot be a part of the Parliamentary discussions, they cannot cast a vote, and they are not allowed to enjoy the special rights and protections that come with being a member of Parliament. Moreover, if a person participates in Parliamentary sessions or votes without having taken the oath, or if they do so knowing that they're not eligible or have been disqualified, or if they've been banned from participating according to some Parliamentary law, they're breaking the rules. For each day they break these rules, they're liable to a penalty of ₹ 500.

Salaries and Allowances

Article 106 of the Constitution empowers the Parliament to determine the Salaries and allowances of members of both the Houses of Parliament but there is no provision of pension in the Constitution. However, the Parliament has provided pension to the members. To do so the Parliament enacted the **Salaries, Allowances and Pension of Members of Parliament Act, 1954.** To provide constituency allowances to MPs, the Parliament has enacted the Members of Parliament (Constituency Allowances) Rules, 1986.

Article 97 empowers the Parliament to make provisions for the **salary and allowances of the Chairman and Deputy Chairman of the Rajya Sabha** and the Speaker and the Deputy Speaker of the Lok Sabha. To do so the Parliament enacted the **Salaries and Allowances of Officers of Parliament Act, 1953**. Under this act , the Officer of Parliament comprises the four above-mentioned officers.

Presiding Officers of the Parliament (Article 89 to 97)

Each chamber within the **bicameral Parliament** of India is governed by its respective presiding authority. In the Lok Sabha, which is the Lower House, the presiding officers are designated as the **Speaker** and the **Deputy Speaker.**

Similarly, the **Rajya Sabha**, known as the Upper House, is presided over by a **Chairman and a Deputy Chairman.** The **Chairman of the Rajya Sabha also serves as the Vice President of India** and presides over the sessions.

Lok Sabha	Rajya Sabha
• Speaker • Deputy Speaker • Pro-tem Speaker • Panel of Chairpersons	• Chairman • Deputy Chairman • Panel of Vice-Chairpersons

The Speaker of Lok Sabha

- **Article 93 to 97** of the Indian Constitution constitute provisions related to both **Speaker and Deputy Speaker**. **Article 93** of the Constitution provides for the Speaker and Deputy Speaker positions for the Lok Sabha.
- The **Speaker is elected by the members of Lok Sabha** from amongst themselves by a **simple majority of** the members present and voting in the House. He enjoys vast authority and powers, under the Constitution and the Rules, as well as conventionally. The **President fixes the date of election of the Speaker**.
- **Whenever the House of the People is dissolved**, the **Speaker shall not vacate his office** until immediately before the first meeting of the House of the People after the dissolution.

Powers and duties of the office of the Speaker in India

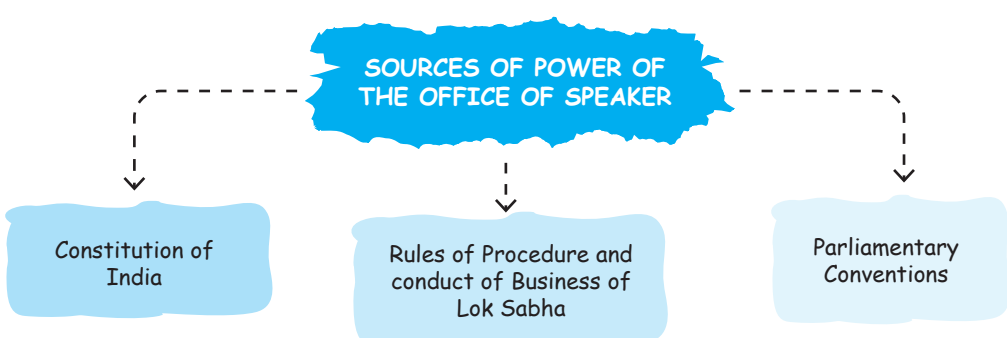

SOURCES OF POWER OF THE OFFICE OF SPEAKER
Constitution of India
Rules of Procedure and conduct of Business of Lok Sabha
Parliamentary Conventions

Fig. 18.7: The Speaker of Lok Sabha

Categorisation of Powers	Power/Duty	Further Description
Conduct of Proceedings	❑ Maintaining Order and Decorum in the House	❑ He/she ensures the smooth conduct of business. He regulates proceedings, holding the final power to maintain order and decorum.
Interpretative Authority	❑ Final Interpreter of Constitutional and Legislative Provisions in the House	❑ He/she interprets the provisions of the Constitution, the Rules of Procedure and Conduct of Business of Lok Sabha, and Parliamentary precedents within the House.
Regulatory Functions	❑ Adjournment in Absence of Quorum	❑ He/she adjourns the House or suspends the meeting if there's no quorum, which is one-tenth of the total strength of the House.
Voting Powers	❑ Casting Vote in Case of a Tie	❑ He/she does not vote initially but has a casting vote to break a tie, thereby resolving deadlocks.
Joint Session Leadership	❑ Presiding Over Joint Sessions of Parliament	❑ He/she presides over joint sessions of the two Houses of Parliament, which the President summons.
Confidential Proceedings	❑ Permission for 'Secret' Sittings	❑ He/she can allow a secret sitting of the House at the request of the Leader of the House and control the presence of strangers during such sittings.
Legislative Powers	❑ Deciding on Money Bills	❑ He/she decides if a bill is a money bill, with his decision being final. He endorses money bills with a certificate before they are sent to the Rajya Sabha.
Member Disqualification	❑ Disqualification on the Grounds of Defection	❑ He/she decides questions of disqualification of a Lok Sabha member arising from defection, this decision is subject to judicial review.
Parliamentary Liaison	❑ Ex-Officio Chairman of Parliamentary Groups and Conferences	❑ He/she acts as the ex-officio chairman of the Indian Parliamentary Group and the conference of presiding officers of legislative bodies, facilitating communication between Indian and international legislative bodies and among the legislative bodies within the country.
Committee Oversight	❑ Appointments to Parliamentary Committees	❑ He/she appoints the Chairman of all Parliamentary committees of the Lok Sabha and supervises their functioning. He serves as the chairman of the Business Advisory Committee, the Rules Committee, and the General Purpose Committee, overseeing key operations.

Provisions related to the independence of Office of the Speaker

❑ The Speaker is a respected and powerful figure who must act impartially, treating all Parliamentary members equally regardless of their party affiliation. This ensures democratic proceedings, giving each member the opportunity to be heard. The impartiality of the office is ensured by the following provisions.

Provision for Independence and Impartiality	Description
Security of Tenure	❑ He/she enjoys the security of tenure and can only be removed by an effective majority of the Lok Sabha, which requires a majority of all the then members of the House. The motion of removal requires the support of at least 50 members for consideration and discussion.
Financial Independence	❑ His/her salaries and allowances are fixed by the Parliament and are charged on the Consolidated Fund of India. Consequently, they are not subject to the annual vote of Parliament. (Article 97)
Protection from Discussion and Criticism	❑ Discussions or criticisms regarding his work and conduct in the Lok Sabha are not permitted unless there is a substantive motion in place.

Judicial Immunity	❑ He/she has the authority to regulate procedures, conduct business, and maintain order in the House without any interference from the jurisdiction of any Court. (Article 122)
Casting Voting Rights	❑ He/she does not vote on issues except in the case of a tie. This casting vote provision ensures that his role remains neutral and unbiased. (Article 100)
High Rank in Order of Precedence	❑ He/she holds a very high position in the order of precedence, placed at seventh rank alongside the Chief Justice of India, above all Cabinet Ministers except the Prime Minister or Deputy Prime Minister.

Provisions Related to Re-Election, Resignation and Removal from the office of Speaker

The provisions related to the re-election, resignation, and removal of the Speaker of the Lok Sabha are outlined in the respective rules of procedure and constitutional guidelines.

Re-Election:

- ❑ The Speaker is elected by members of the legislative assembly (e.g., Lok Sabha in India) from among themselves.
- ❑ If the position becomes vacant, a new Speaker is elected.
- ❑ There is no limit on the number of times a member can be re-elected as the Speaker, as long as they retain their seat in the assembly.

Resignation:

- ❑ The Speaker can resign from their office by writing to the Deputy Speaker.
- ❑ If the post of Deputy Speaker is vacant, the Secretary-General receives the letter of resignation and informs the House about it.

Removal Process (Article 94):

- ❑ The term of the Speaker aligns with that of the Lok Sabha, which is five years. Nevertheless, the Constitution empowers the Lower House to dismiss the Speaker if necessary.
- ❑ The House can initiate the removal through a resolution after giving 14 days' notice**,** passed by an **effective majority i.e.** majority of the then members of the House , in accordance with **Articles 94 and 96** of the Indian Constitution.
- ❑ When a resolution for the removal of the Speaker is under consideration of the House, he/she cannot preside over the sitting of the House, though he may be present.
- ❑ However, he can speak and take part in the proceedings of the House at such a time and **vote in the first instance, though not in the case of an equality of votes.**
- ❑ Additionally, the Speaker may face removal if disqualified as a Lok Sabha member under Section 7 and 8 of the Representation of the People Act, 1951.

It's noteworthy that **Dr. Neelam Sanjiva Reddy** holds the **distinction of being the only Speaker to resign from the office**. Furthermore, he is **unique** in being the **only Speaker** who was **subsequently elected as the President of India**.

Comparison between the office of Indian and British Speaker

Criteria	Indian Speaker	British Speaker
Election	❑ Elected from among the members of the Lok Sabha after a new assembly is formed.	❑ Elected from among the members of the House of Commons, often unopposed in subsequent elections.
Partisanship	❑ Expected to be impartial, but retains membership in their political party.	❑ Required to be completely impartial and resign from their political party upon election.
Tenure	❑ Continues in office even if the Lok Sabha is dissolved until a new Lok Sabha is formed.	❑ Remains in office regardless of changes in government or general elections, until resignation or retirement.
Role in Parliamentary Proceedings	❑ Has extensive powers to conduct the business of the House, including disciplinary actions.	❑ Holds significant authority over the conduct of business in the House and maintains order.
Post-Tenure Practices	❑ Can return to active party politics after their tenure as Speaker.	❑ Traditionally steps down from the House of Commons and is often elevated to the House of Lords. The constituency of the Speaker is also kept uncontested as a form of convention by parties.

The Deputy Speaker of the Lok Sabha

As per **Article 93** the members of the Lok Sabha elect the Deputy Speaker from amongst themselves who presides over the deliberations of the House when the office of the Speaker is vacant or the Speaker is absent from a sitting. The **Speaker fixes the date for the election of the Deputy Speaker**.

The Deputy Speaker is vested with the same powers as the Speaker when presiding over a sitting of the House. He/she remains in the office during the whole life of the current Lok Sabha. He may **vacate his office** in the following manner:

1. If he/she is **no longer a member of the House**.
2. If he/she **presents his resignation to the Speaker** in writing.
3. If he/she is **removed by the House** through a resolution passed by the majority of the then members of the House i.e **effective majority** and this resolution requires a 14 days' advance notice.

As per **convention**, since the 11th Lok Sabha, the position of the **Deputy Speaker generally goes to the opposition party**. The Deputy Speaker, on being a member of a Parliamentary Committee, automatically becomes the Chairman of that Committee. He, **unlike the Speaker**, can speak in the House, take part in its deliberations, and vote as a member on any question before the House, but he/she can do so only when the Speaker is presiding. **17th Lok Shabha has not yet elected the Deputy Speaker**.

- The office of the Speaker and the Deputy Speaker originated in 1921 under the purview of the Montague-Chelmsford Act, of 1919. Before 1921, the meetings of the Central Legislative Council were presided over by the Governor-General of India. In 1921, the Speaker and the Deputy Speaker were called the President and the Deputy-President respectively. Frederick Whyte and Sachidanand Sinha were appointed to these offices by the Governor-General of India in 1921 respectively.
- The first Indian and the first elected speaker of the Central Legislative Assembly was Vithalbhai J. Patel. Government of India Act,1935 changed the designation of the President and the Deputy President to the Speaker and the Deputy Speaker but as the 1935 Act was not implemented, older nomenclature continued till independence.
- After independence, G.V. Mavalankar and Ananthasayanam Ayyangar became the first Speaker and the Deputy Speaker of the Lok Sabha.

Comparison between Speaker and Deputy Speaker

Aspects of Comparison	Speaker	Deputy Speaker
Authority When Presiding	The presiding authority of the Lok Sabha; all powers of the office are active during sessions.	Presides over the Lok Sabha in the Speaker's absence, with all powers of the Speaker. Also presides over joint sittings if the Speaker is absent.
Reporting Responsibility	Accountable to the Lok Sabha; the Speaker's actions and decisions are in the interest of the House.	Not subordinate to the Speaker; directly responsible to the House.
Voting Rights	Does not vote in the first instance; can cast a deciding vote in the event of a tie.	When he/she is not presiding over the house, he/she votes like an ordinary member of the house. While presiding he/she does not vote initially but can cast a deciding vote in the event of a tie.
During Removal Motion	Cannot preside over the House during their own removal motion.	Cannot preside over the House when a resolution for their removal is under consideration.
Role When Not Presiding	Does not act as an ordinary member; typically does not participate in debates or vote.	Acts as an ordinary member of the House with the right to speak, participate in debates and vote.
Remuneration	Salary and allowances fixed by the Parliament, charged on the Consolidated Fund of India.	Same as the Speaker; receives a regular salary and allowance fixed by Parliament and charged on the Consolidated Fund of India.
Parliamentary Committee Role	Appoints the chairman of all Parliamentary Committees of the Lok Sabha and supervises their functioning.	When appointed to a Parliamentary Committee, automatically becomes its chairman.

Party Affiliation	❑ The Speaker has traditionally been from the ruling party or alliance but is expected to remain impartial.	❑ Since the 11th Lok Sabha, the convention has been for the Deputy Speaker to be from the main opposition party.
Oath of Office	❑ No separate oath for becoming the Speaker; they continue under their oath as a member of the Lok Sabha.	❑ Similarly, the Deputy Speaker does not take a separate oath upon assuming the role.

Speaker Pro-tem

- ❑ When a new Lok Sabha is elected (after general elections), the Speaker from the previous Lok Sabha steps down right before the newly elected members (MPs) come together for the first sitting of the newly elected Lok Sabha. **Article 95(1)** states that when the office of the Speaker and the Deputy Speaker are **vacant**, such members of the House as the President may appoint shall perform the function of the Speaker.
- ❑ **Appointment:** As the Lok Sabha needs someone to manage its meetings right from the start, the **President of India** steps in to appoint **a temporary Speaker**. This position is known as the Speaker Pro Tem. Usually, the senior most member is selected for this (senior most in terms of number of times elected in the house not by age).
- ❑ **Oath:** The President administers the oath to the Speaker Pro Tem.
- ❑ **Duty:** The Speaker Pro Tem has the same authority as a full-time Speaker. They lead the very first session of the new Lok Sabha. The key job of the Speaker Pro Tem is to conduct the swearing-in of the new members of the Lok Sabha. Apart from that, they also help in the process of election of a new, permanent Speaker.
- ❑ **Temporary nature of the position:** Once the Lok Sabha selects its new Speaker, the role of the Speaker Pro Tem is no longer needed and thus ends. This temporary position is just for the initial days of the new Lok Sabha, to ensure that the house is functional and can carry out its duties like choosing a permanent Speaker.

IGNITE YOUR MIND

While the French practice of following seniority for appointing the Pro-tem Speaker has been adopted in India, concerns persist about potential biases and limitations. How can we ensure a more inclusive and merit-based selection process for the Pro-tem Speaker, while upholding established traditions and maintaining the smooth functioning of the legislature?

Panel of Chairpersons

- ❑ During the absence of the Speaker from any sitting of the House of the People the Deputy Speaker or, if he/she is also absent, **such person as may be determined by the rules of procedure of the House,** or, if no such person is present, such other person as may be determined by the House, shall act as the Speaker **[Article 95(2)]**.
- ❑ The **Speaker nominates ten members to the Panel of Chairpersons** either at the commencement of the House or from time to time **guided by the Rules of Lok Sabha**. In the **absence** of the Speaker and the Deputy Speaker, one of them presides over the sittings of the House.
- ❑ When the office of the Speaker and the Deputy Speaker is vacant then no member from the panel of chairpersons can preside over the sitting of the House. In this case a member is selected by the President for this purpose.
- ❑ The members of the Panel of Chairpersons have similar powers as the Presiding Officers when they preside over the sittings of the House. Also, the rulings of the Panel of Chairpersons are not subject to any criticism nor open to any debate or appeal.

Chairperson of Rajya Sabha

- ❑ **Articles 89 to 92** of the Constitution constitute provisions related to the **Chairperson and the Deputy-Chairperson of the Council of States (Rajya Sabha). Article 89** provides for the office of the Chairman of the Council of States.
- ❑ The presiding officer of the Rajya Sabha is known as the Chairperson.
- ❑ The **Vice-President of India, who is also the ex-officio Chairperson of Rajya Sabha**, is **elected for a term of five years by an electoral college** consisting of the members (elected and nominated) of both the Houses of Parliament (and not that of the state legislative assemblies) in accordance with the system of proportional representation by means of single transferable vote.
- ❑ All disputes regarding the election of the Vice-President are decided by the Supreme Court and the decision is final.
- ❑ The Vice-President presides over the sittings of the **Rajya Sabha**. He is not a member of either House of Parliament or of a House of Legislature of any State.

Role of the Vice-President as Acting President (Article 65):

- He/she holds a distinct position within the Indian political system.
- He/she steps into the President's responsibilities during the President's absence, illness, or other such incapacities.
- He/she relinquishes the role of Chairperson of the Rajya Sabha while acting as the President.

Removal Process

- He/she may be removed from his office by a resolution of the Council of States passed by a **majority of all the then members** of the council and agreed to by the House of the People.
- This implies that the resolution for removal should secure an **effective majority in the Rajya Sabha and a simple majority in the Lok Sabha.**
- This resolution must originate in the Rajya Sabha and not in the Lok Sabha.
  - However, it cannot be introduced without providing a **minimum of 14 days prior notice.**
- The Constitution does not specify grounds for his removal.
- He/she is not entitled to vote on a resolution for his/her removal as he/she is not a member of the Rajya Sabha **(Article 92).** Although, he may be present and take part in the proceedings, without voting.

Comparison Between the Office of the Speaker of Lok Sabha and the Chairperson of the Rajya Sabha

The duties and powers of the Chairperson are similar to that of the Speaker of the Lok Sabha with some differences.

Aspects of comparison	Speaker of the Lok Sabha	Chairperson of the Rajya Sabha
Decision on Money Bill	❑ Has the exclusive power to decide whether a bill is a money bill, and the decision is final.	❑ Does not have this power.
Presiding Over Joint Sittings	❑ Presides over joint sittings of the two Houses of Parliament.	❑ Does not preside over joint sittings.
Membership in the House	❑ Is a member of the House (Lok Sabha).	❑ Is not a member of the House (Rajya Sabha).
Voting Rights	❑ Cannot vote in the first instance but can cast a deciding vote in case of a tie.	❑ Cannot vote in the first instance but can cast a deciding vote in case of a tie.
Presence During Removal Motion	❑ Cannot preside over the sitting when a resolution for their removal is under consideration, can vote in the first instance when a resolution for their removal is under consideration.	❑ Cannot preside over the sitting when a resolution for their removal is under consideration but can be present, speak, and participate without voting.
Salaries and Allowances	❑ Fixed by Parliament, charged on the Consolidated Fund of India, not subject to the annual vote of the Parliament.	❑ Fixed by the Parliament, charged on the Consolidated Fund of India, not subject to the annual vote of the Parliament.

Deputy Chairperson of Rajya Sabha

- **Article 89** provides for the office of the Deputy Chairman of the Council of States.
- The Deputy Chairperson of the Rajya Sabha is elected internally by members of House.
- On vacancy, the Rajya Sabha elects a new Deputy Chairperson.
- The Deputy Chairperson's office is vacated if
  - The holder is no longer a member of the Rajya Sabha.
  - The holder resigns in writing to the Chairperson.
  - The holder is removed by a majority of all the then members of the Rajya Sabha, with at least 14 days' notice.
- He assumes the Chairperson's duties when:
  - The Chairperson's office is vacant.
  - The Vice-President (who is the Chairperson) performs the President's duties.
- He possesses all the powers of the Chairperson when presiding.
- He is **not subordinate to the Chairperson** but accountable to the Rajya Sabha.
- While presiding he cannot vote initially but may cast a tie-breaking vote. And when the chairperson is presiding over the sitting he like any other member, can vote on any matter in the first instance.

- While a removal resolution against the Deputy Chairperson is discussed, he can't preside but may attend, participate, and vote **(Article 92).**
- As an ordinary member of the Rajya Sabha, the Deputy Chairperson can speak, vote, and engage in debates when the Chairperson presides.
- He receives a fixed salary and allowances that are charged on the Consolidated Fund of India, set by the Parliament.

- The Chairperson or Deputy Chairperson is barred from presiding over the session discussing a resolution for their removal. While they can be present and have the right to speak and participate in the House proceedings, the Chairman cannot cast a vote initially in the removal resolution for the Vice-President as he/she is not a member of the Council of States. On the other hand, the Deputy Chairman can vote on the resolution for their removal in the first instance as a Council member **(Article 92).**
- Both the Chairman and Deputy Chairman of the Rajya Sabha receive salaries and allowances determined by the Parliament through legislation **(Article 97).**

Panel of Vice-Chairpersons the Rajya Sabha

- In the case of the **absence** of both the Chairperson and the Deputy Chairperson, one of the members nominated by the Chairperson on the Panel of Vice-Chairpersons presides over the sittings of the Rajya Sabha **(Article 91)**. When the member from the panel of vice-chairperson is absent, the House choses a member to head the sitting.
- But if the office of the Chairperson and the Vice-Chairperson is **vacant** then the functions of the Chairperson are performed by a member appointed by the **President** for the purpose, a member of the panel of Vice-Chairpersons can not preside over the House in this case.

Secretariat of the Parliament (Article 98 of Indian Constitution)

- The **Constitution** recognizes a **separate Secretariat for each House of the Parliament** and provides that Parliament may by law regulate the recruitment and the conditions of service of persons appointed to the **secretarial staff of either House of the Parliament**.
- To ensure the independence of the Secretariats from the Executive Government, matters governing and regulating the recruitment and conditions of service of the officers and staff of the Lok Sabha and Rajya Sabha Secretariats are governed by their **Recruitment and Conditions of Service Rules.**
- The Executive has, therefore, no direct control over the conditions of service of the employees of the Secretariats which function under the overall guidance and control of the Speaker of Lok Sabha and the Chairman of Rajya Sabha. **Each Secretariat** is headed by the **Secretary-General who is a permanent officer.**

The Secretary-General

- Each House of the Parliament has an independent Secretariat which is headed by the **Secretary-General who is appointed by the Presiding Officer of the House** concerned and works under his/her overall control and supervision.
- The Secretary-General is the advisor to the Presiding Officer in all matters pertaining to the exercise of all powers and functions vested with him, and to the House, through the Presiding Officer.
- The Secretary-General extends his expert **assistance to the Presiding Officers** on matters relating to the **interpretation** of rules or precedents or conventions of Parliamentary practices and procedures.
- The Secretary-General also serves as an advisor to the members of the respective Houses on all matters of practice and procedure in the House.
- In his capacity as the Secretary-General, he assumes the office of the Secretary of all the Parliamentary Committees functioning under the respective Houses.
- The Secretaries-General are also conventionally appointed the Returning Officer for conducting elections to the **Office of the President and the Vice-President** of India by rotation. They hold a rank equivalent to the highest civil servant of the Union Government, i.e. the Cabinet Secretary.

Leaders Inside the Parliament

Leader of the House

- The **Prime Minister, the Leader of the majority party in the Lok Sabha**, functions as the Leader of the House of which he is a member. In another house, he nominates a minister who is a member of the House as the Leader of the House.
- The **office of the Leader of the House** is mentioned in the **Rules of the House** and is an **important Parliamentary functionary**.
  - He/she draws up the programme of the official business to be transacted during a Session of the Parliament, namely bills, motions, and discussions on specific subjects.

- He/she also fixes inter-se-priorities for various items of business to ensure their smooth passage.
- Under the Rules of the House, the Leader of the House is consulted by the Presiding Officer with regard to the arrangement of Government Business in the House and allotment of days and allocation of time for discussion of various business. He also makes proposals for the dates of the summoning and prorogation of the House.

- It is usually specified that a member of a party can be acknowledged as the 'Leader of the Opposition' only if that party holds at least **one-tenth of the total membership in the House**, criterion stems from a **directive issued by the Speaker in the 1950s**, determining the recognition of a party for seat allotment in the Lok Sabha and participation in debates.
- Despite the absence of a legal requirement, the leader of the opposition party with the largest numerical strength is usually recognized as the 'Leader of the Opposition.' This leader, in both Houses, enjoys all the privileges of a **Cabinet rank minister**.
- In the Lok Sabha, the **Leader of the Opposition** is also a member of committees responsible for selecting the Director of the
  - Central Bureau of Investigation
  - Chief Vigilance Commissioner
- Members, and Chairperson of the Central Information Commission, Lokpal, and more.
- Additionally, the Leader of the Opposition in both Houses participates in the committee that selects members and chairpersons of the National Human Rights Commission.

Leader of the Opposition

- He/she is the leader of the largest party that is not in government and has at least one-tenth of the total seats in the respective House of Parliament.
- The 'Leader of the Opposition' is responsible for providing constructive criticism of the government's policies and representing an alternative government.
- The 'Leader of the Opposition' was officially recognized for the first time in India in 1969.
- Since 1977, the 'Leader of the Opposition' in both the Lok Sabha and the Rajya Sabha **has had statutory status**. Subsequently 'The **Salary and Allowances of Leaders of Opposition in Parliament Act, 1977'** was enacted that provided a **statutory status to the leaders of opposition**.
- The equivalent role in the **USA** is known as the **'minority leader'**. In the **UK, the concept of a 'Shadow Cabinet' exists**, where the opposition mirrors the official cabinet, ready to take over if the government changes.
  - **Ivor Jennings** described the **'Leader of the Opposition' as the 'alternative Prime Minister'** because they are seen as the prime candidate to become Prime Minister should the opposition win power, reflecting their status and ministerial equivalence in the government structure.

Whips

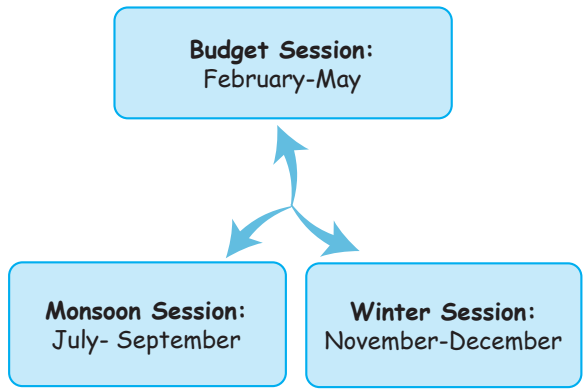
- The term 'whip' derived from the British Parliamentary convention under which they are directed to follow the party line.
- In the **Parliamentary form of Government**, a party has its **own internal organization** inside Parliament and is served by a **number of officials known as the Whips**, chosen from members of the party itself.
- The office of the whip is based on the conventions of the Parliamentary government.
- A whip is a direction from a political party that binds the members of that party in a house to follow the instructions of the party.
- There exist three types of whips as per convention:
  - **One-line whip:** This is issued to inform members about a vote without specifying how they should vote.
  - **Two-line whip:** Members are directed to be present in the House during voting, but no specific instructions on the voting pattern are given.
  - **Three-line whip:** Members receive instructions to vote in alignment with the party line.
  - In both the **Lok Sabha and the Rajya Sabha, each party appoints a 'Chief Whip'** who provides these instructions during a vote.
    - The **Chief Whip's responsibilities** include maintaining discipline among party members, ensuring attendance and voting according to the whip issued, informing party members about the party's stance on various issues, and supplying the list of speakers on Bills and other matters to the Speaker or Chairman.
  - Failure to comply with the whip's instruction on voting may lead to disqualification under the Tenth Schedule.
  - Additionally, the Parliament passed **'The Leaders and Chief Whips of Recognized Parties and Groups in Parliament (Facilities) Act, 1998**,' granting specific telephone and secretarial facilities to Chief Whips of recognized parties and groups in each House of Parliament.

Sessions and Parliamentary Business

Each House of the Parliament is summoned by the President. A session means the **period between the summoning and the prorogation** of the House. The Constitution provides that the **maximum gap** between two sessions of the Parliament can **not be more than six months**. The period spanning between the prorogation and the reassembly of the House is called 'recess'.

Parliament holds three Sessions in a year:

The **quorum** to constitute a sitting of the House is **one-tenth of the total members** of the House.



Overview of Parliamentary Procedures: Adjournment, Prorogation, and Dissolution

Aspect	Description	Related Details
Adjournment	Suspension of a sitting for a specified time	It can be for hours, days, or weeks
Adjournment Sine Die	Termination of a sitting for an indefinite period	**No specified day** for reassembly. **Presiding officer** has the power for adjournment and adjournment sine die
Prorogation	Official ending of a session	Declared by the presiding officer. Notification issued by the President. Can occur while the session is in progress
Dissolution (Lok Sabha)	Ends the life of the existing House	Automatic dissolution after five years or during national emergency. President can dissolve the House at any time
Impact of Dissolution on Parliamentary Business	Effect on pending business	All pending business in Lok Sabha lapses. Certain bills and assurances in Rajya Sabha do not lapse
Specific Cases of Lapsing Bills	Status of various bills upon dissolution	1. Bill pending in Lok Sabha lapses 2. Bill passed by Lok Sabha but pending in Rajya Sabha lapses 3. Bill pending due to disagreement and awaiting joint sitting does not lapse 4. Bill pending in Rajya Sabha but not passed by Lok Sabha does not lapse 5. Bill passed by both Houses but awaiting President's assent does not lapse 6. Bill returned by President for reconsideration does not lapse

Parliamentary Business is broadly divided into Government Business and Private Members' Business. The Government Business is further divided into two categories: (i) Items of business initiated by the Government, including Legislative and Financial Business; and (ii) Items of business initiated by private members but taken up in Government time.

President's Address

- **Articles 86 and 87** of the Constitution address the topic of the President's speech. Article 86 grants the President the right to address either House of Parliament or both Houses together, requiring the attendance of members. However, since the Constitution's commencement, the President has not exercised this provision to address both Houses together.
- **Article 87 focuses on the Special Address by the President,** stating that the President must address both Houses of Parliament assembled together at the beginning of the first session after each general election to the Lok Sabha and at the commencement of each year's first session. This address serves to inform Parliament about the reasons for its summons and is akin to the **'speech from the throne'** delivered by the King of the UK to the British Parliament.
- Regarding the **content of the address,** it **represents the Government's policy statement** and is drafted by the Government. The Address comprises paragraphs based on information from various Ministries and Departments, making the Government responsible for its content.

- It includes a review of the Government's activities and achievements in the previous year, policies on significant internal and international issues, and the Government's business program. However, it does not encompass the entire probable legislative business for all sessions of the year.

Language in Parliament

Article 120: Language to be used in Parliament -

- Notwithstanding anything in **part XVII**, but **subject to the provisions of article 348**, **business in Parliament shall be transacted in Hindi or in English:** Provided that the **Chairman of the Council** of States or **Speaker** of the House of the People, or person acting as such, may permit any member who cannot adequately express himself in Hindi or in English to a**ddress the House in his mother-tongue.**
  - In both the Houses, facilities are available for simultaneous interpretation of speeches made in any of the languages specified in the Eighth Schedule of the Constitution into Hindi and English. However, if a member addresses the House in a language for which simultaneous interpretation facility is not available, he/she has to provide a translation copy of his/ her speech in Hindi or English.
- Unless Parliament by law otherwise provides, this article shall, after the expiration of a period of fifteen years from the commencement of this Constitution, have effect as if the words "or in English" were omitted.
  - The **Constitution provided for English** to be **discontinued in 1965** but the **Official Languages Act,1963 allowed it to be continued**

Rights of Ministers and Attorney General (Article 88)

Ministers have the right to speak and take part in the proceedings with the right to vote only in the house of which he has membership. **Ministers along with the Attorney General** can take part in the proceedings of either House, joint sitting of the two Houses or any Parliamentary Committee.

Procedural Devices with the Parliament

Question Hour:

The first hour of every sitting in both the Houses is normally devoted to Questions which are the most potent and effective device in the hands of the members. Questions are primarily asked to elicit information from the Government to ensure accountability and to ventilate the grievances of the public in matters concerning administration.

Types of Questions:

- **Starred Questions(*):** These queries are directed for oral replies from the concerned Minister and should be submitted with at least a 15-day notice. Supplementary questions can follow The Lok Sabha schedules a maximum of 20 starred questions for oral response each day.
- **Unstarred Questions:** Responses to unstarred questions are given in writing by the relevant Ministry. These also require a submission 15 days prior, and there's a cap of 230 unstarred questions for written replies each day.
- **Short Notice Questions:** When matters of immediate public importance arise, MPs may raise short notice questions with under 10 days' notice, provided they justify the urgency. These questions are answered orally.
- **Questions to Private Members:** These questions are aimed at individual MPs concerning legislation, resolutions, or particular matters falling within the ambit of their duties in the House

These different types of questions are printed in different colors to distinguish them properly. The list of starred, unstarred, short notice questions and questions to private members are printed in green, white, light pink and yellow colors.

Zero Hour:

- Immediately after the **Question Hour** and before the regular business as entered in the **List of Business** is taken up, comes the 'Zero Hour'.
- During this period, members try to focus the attention of the House on recent developments of public interest.
- Although the term is not mentioned in the Rules of Procedure, it has become a popular device in practice.
- Considering that members cutting across party lines have found this practice useful, the 'Zero Hour' has been streamlined recently and is **conducted in two phases.** In the first phase, about five matters of urgent national and international importance are taken up after the Question Hour and in the second phase, the remaining matters for the day are taken up after all the listed business of the House is over.
- The Government is, however, under no obligation to respond to the matters raised during the 'Zero Hour'. It is an Indian innovation and the tradition of the Zero Hour started in 1962.

Under the current government, the 'Question Hour' has been skipped thrice. First, it was skipped in 2017 during a special event at night to start a new tax system, and that meeting was mostly just for show. After that it was in 2020 because of the COVID-19 pandemic. In a special five-day session of Parliament of 2023 also, 'Question Hour' or 'Zero Hour' was not upheld.

Debates and motions related to procedural devices

- MPs may raise various issues and debate in the House. Some of these are posed as questions in the form of motions and subsequently voted upon by the House. The House may also discuss issues without voting upon them.

❑ There are a number of opportunities for Members of Parliament to raise issues on their own initiative. Some of these are discussed below.

Motions: A motion is a proposal brought before the House to elicit the opinion or decision of the House.

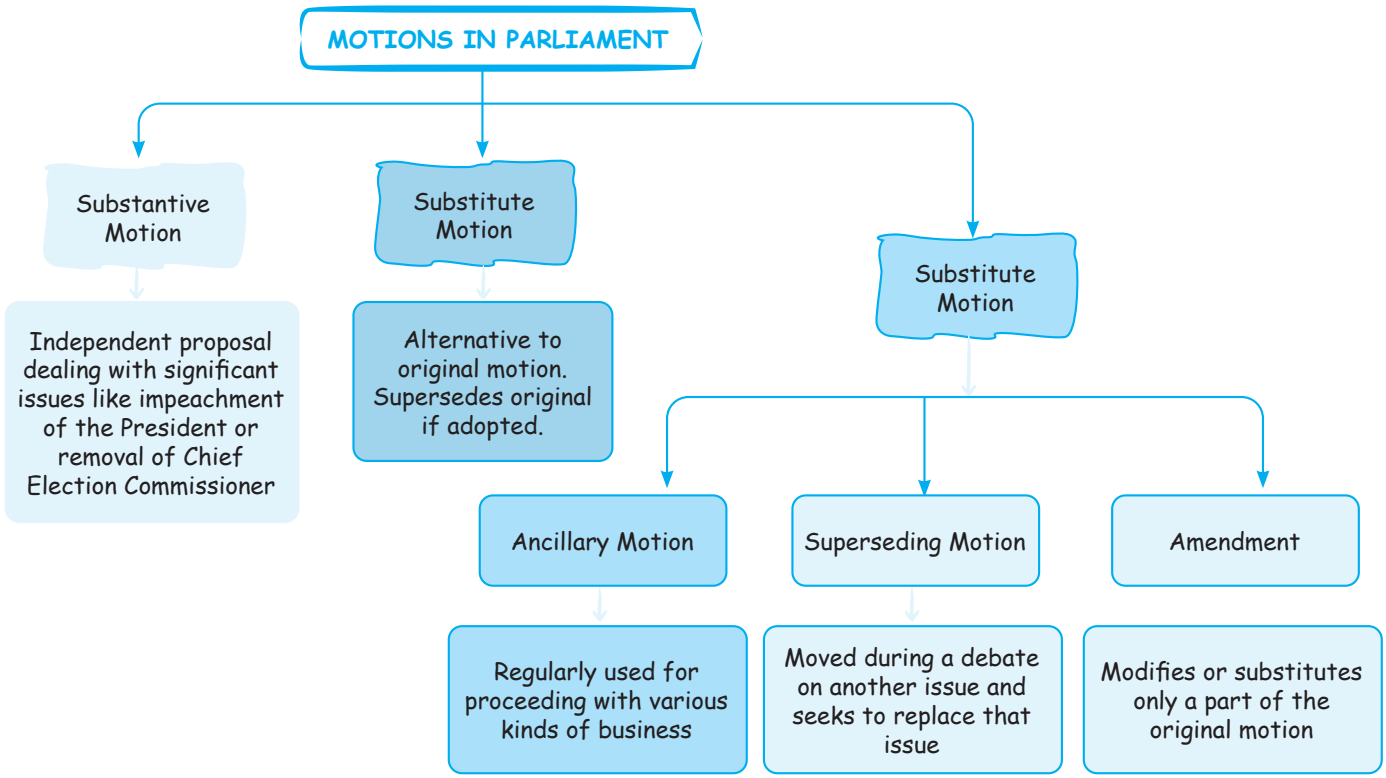

MOTIONS IN PARLIAMENT
Substantive Motion
Substitute Motion
Substitute Motion
Independent proposal dealing with significant issues like impeachment of the President or removal of Chief Election Commissioner
Alternative to original motion. Supersedes original if adopted.
Ancillary Motion
Superseding Motion
Amendment
Regularly used for proceeding with various kinds of business
Moved during a debate on another issue and seeks to replace that issue
Modifies or substitutes only a part of the original motion

Fig. 18.8: Debates and motions related to procedural devices

Specific Types of Motions:

Type of Motion	Description	Specifics
Closure Motion	Moved by a member to cut short the debate on a matter, leading to a vote.	❑ **Simple closure:** When the matter is sufficiently discussed by all members concerned, then a motion for simple closure is moved. ❑ **Kangaroo closure:** This means that instead of discussing all the components of the bill, only important clauses of the bill are discussed and the matter is put to vote. ❑ **Closure by compartments:** It means clubbing or grouping of sections that are similar into compartments, then discussing the compartments as a whole and putting the compartments to vote. ❑ **Guillotine closure:** It means putting all the undiscussed matters to vote along with the discussed matter, when the time allotted for discussion is over.
Privilege Motion	❑ Concerns with breach of Parliamentary privileges by a minister. ❑ Proposed by members of the house when they believe that a minister has violated the privilege of the house or one or more of its members by either withholding facts of a case or providing incorrect or distorted information.	Censure of minister for breach of privilege.

Type of Motion	Description	Specifics
Calling Attention Motion	Calls the attention of a minister to a matter of urgent public importance for an authoritative statement.	Indian innovation since 1954. Mentioned in the Rules of Procedure.
Adjournment Motion	Draws attention to a definite matter of urgent public importance. Requires support of 50 Lok Sabha members.	❑ Interrupts normal business of the house. ❑ Involves censure against the government. It is only available in Lok Sabha. ❑ Discussion on an adjournment motion should last for not less than two hours and thirty minutes. ❑ The ability to propose a motion for the adjournment of the House's business is limited by the following conditions: • The motion must address a specific, factual, urgent, and publicly important matter. • It should pertain to only one issue. • The motion should be confined to a particular recent occurrence and avoid general terms. • It must not involve a question of privilege. • The motion should not reintroduce discussion on a topic already addressed in the same session. • It should not relate to a matter currently under court adjudication. • The motion should not raise a question that can be addressed through a separate motion.
No-Confidence Motion	Lok Sabha can remove the ministry from office by passing this motion. Requires support of 50 members to be admitted.	According to Article 75 of the Constitution, the Council of Ministers is collectively accountable to the Lok Sabha. This implies that the ministry remains in power as long as it retains the confidence of the majority of Lok Sabha members.
Confidence Motion	It has emerged as a new procedural mechanism to address the evolving scenarios of fragmented mandates leading to hung Parliaments, minority governments, and coalition administrations.	Governments formed with a wafer-thin majority have been tasked by the President to demonstrate their majority in the House. Occasionally, the incumbent government initiates the process independently, aiming to establish its majority by proposing a motion of confidence and securing the trust of the House. Should the confidence motion be rejected, it leads to the collapse of the government.
Censure motion	Legislative expression of disapproval against a minister or cabinet, indicating dissatisfaction without forcing resignation.	❑ It can only be introduced in Lok Sabha ❑ It should state the reasons for its adoption ❑ Can be moved against an individual minister or a group of ministers or entire council of ministers ❑ If it is passed in the house, there is no need for ministers to resign from the office.

Type of Motion	Description	Specifics
Motion of Thanks	Discussion on the President's address outlining government policies and programmes.	❑ First session after the general election and fiscal year is addressed by the President. ❑ The President outlines the policies and programmes of the government in the preceding year and ensuing year. ❑ Must be passed in the House, otherwise it amounts to the defeat of the government ❑ The President's inaugural speech provides members of Parliament with an opportunity to initiate discussions and debates, allowing for the examination and critique of the government and administration for any shortcomings and failures
No-Day-Yet-Named Motion	Admitted by the presiding officers but no date fixed for discussion.	The presiding officer, taking into account the House's business and consulting with the leader of the House or based on the recommendation of the Business Advisory Committee, assigns one or more days, or part of a day, for the discussion of a motion.
Dilatory Motion	For adjournment of the debate on a bill/ motion/resolution etc or a motion to delay or retard the progress of a business under consideration.	A member is allowed to propose a dilatory motion at any point after a motion has been introduced. The discussion on a dilatory motion is limited to the subject stated in the motion. If the Speaker deems that such a motion is a misuse of the House rules, they can either immediately present the question for consideration or choose not to suggest the question.

Censure Motion vs No-Confidence Motion:

Aspect	Censure Motion	No-Confidence Motion
Reasons for Adoption	❑ Must state the reasons for its adoption in the Lok Sabha.	❑ No need to state the reasons for its adoption in the Lok Sabha.
Target	❑ Can be moved against an individual minister, a group of ministers, or the entire council of ministers.	❑ Can only be moved against the entire council of ministers.
Purpose	❑ To censure the council of ministers for specific policies and actions.	❑ To ascertain the Lok Sabha's confidence in the council of ministers.
Consequence if Passed	❑ Does not require the council of ministers to resign from office.	❑ Requires the council of ministers to resign from office.

Resolutions

- ❑ A resolution is an **independent, self-contained proposal** that is brought before the House for approval. It is written in a way that allows the House to express its decisions. All resolutions are **substantive motion**.
- ❑ **Members** have the ability to propose resolutions to highlight issues of widespread public concern to the House or the government. Any debate on a resolution must be directly related to its content and limited to its scope. **Once a member proposes a resolution or an amendment to it, they can only retract it with the House's permission**.

Objectives of Resolution

- Expressing an opinion or making a recommendation.
- Recording approval or disapproval by the House of a government act or policy.

- Conveying a message or endorsing, urging, or requesting a specific action.
- Drawing attention to a matter or situation for consideration by the government.

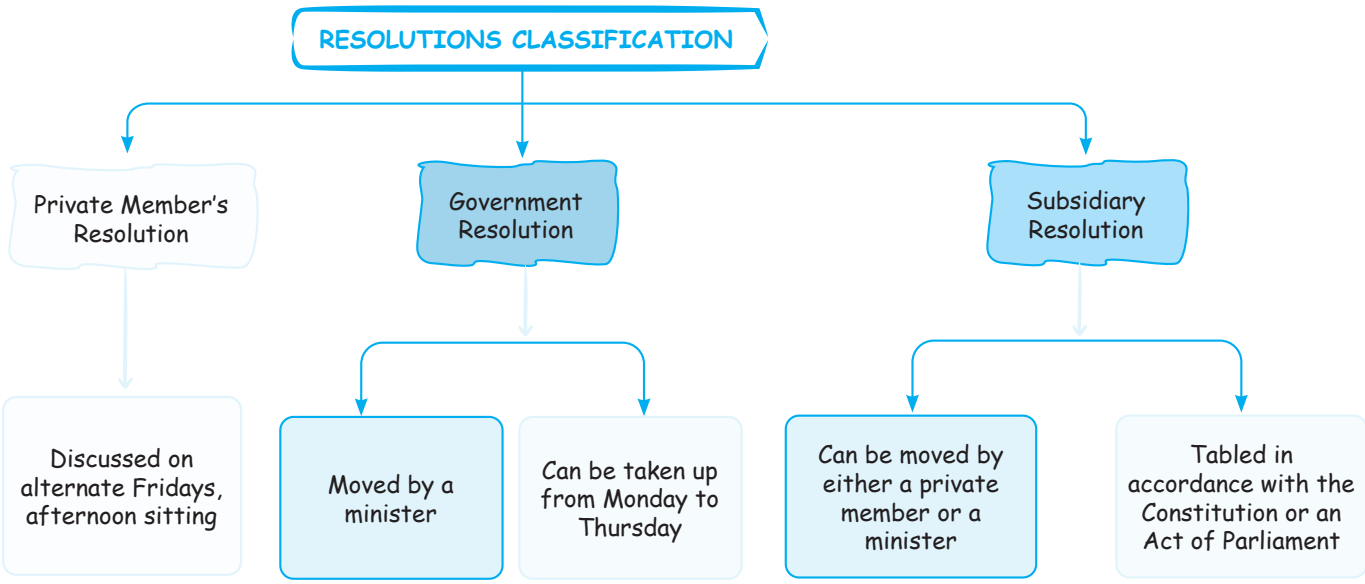

RESOLUTIONS CLASSIFICATION
Private Member's Resolution
Government Resolution
Subsidiary Resolution
Discussed on alternate Fridays, afternoon sitting
Moved by a minister
Can be taken up from Monday to Thursday
Can be moved by either a private member or a minister
Tabled in accordance with the Constitution or an Act of Parliament

Fig. 18.9: Objectives of Resolution

Resolutions Classification

- **Private Member's Resolution** refers to a resolution proposed by a member who is not a minister. It is deliberated upon only on alternate Fridays during the afternoon sitting.
- **Government Resolution** is introduced by a minister and falls into three categories:
  - Resolutions endorsing international treaties, conventions, or agreements in which the government is a participant.
  - Resolutions declaring or endorsing specific government policies.
  - Resolutions approving recommendations put forth by certain committees.
- **Statutory Resolution** can be initiated by either a **private member or a minister**. Its name stems from its alignment with a provision in the Constitution or an Act of Parliament.

Conditions of Admissibility:

- It should be clearly and precisely expressed;
- It should raise substantially, one definite issue
- It should not contain any argument, inferences, ironical expressions, imputations or defamatory statements;
- It should not refer to the conduct or character of persons except in their official or public capacity; and
- It should not relate to a matter which is under adjudication by a court of law having jurisdiction in any part of India.

Difference Between a Motion and a Resolution

Aspect	Resolutions	Motions
Category	Substantive motion	Can be substantive or non-substantive
Nature	Every resolution is a specific type of motion	Not all are substantive; variety in types
Requirement for Voting	Must be voted upon by the House	Not all motions require a vote by the House

Other Devices are

Special Mentions (Matters under Rule 377):

- After the laying of papers, matters which cannot be raised under the Rules relating to Short Notice Questions, Calling Attention, Motions, etc. can be raised under Rule 377.
- MPs may raise issues under this Rule, in their individual capacity, with the **consent of the Speaker**.

- Notice needs to be given before 10 am on the day of the sitting and the text of the notice cannot exceed 250 words. **Presently 20 MPs are allowed to raise matters under Rule 377 per day**. The names of the MPs are selected on the basis of the strength of parties in the House.
- A member can raise only one matter under Rule 377 during a week. For example, in the 17th Lok Sabha, a range of matters have been raised, such as the setting up of new schools and railway lines.

Half-an-Hour Discussion (Rule 55):

- Where an answer to a starred or unstarred question needs further explanation, an MP may raise a half-an-hour discussion. He must table a notice **three days in advance**, stating reasons for raising a half-an-hour discussion. The Speaker may allow such a notice at his/her discretion.
- A maximum of **four other MPs can raise further questions during this time**. For example, in the 16th Lok Sabha, some of the topics discussed under half-an-hour discussions included the Pradhan Mantri Gram Sadak Yojana, irregularities under MGNREGS, and a rise in the price of milk.

Short Duration Discussion (Rule 193):

- Its period can range from one hour to two hours. Usually, it is allowed by the speaker for 2 days in a week to raise any issue of public importance. The Minister-in-charge responds at the end of the discussion. Some of the major issues discussed in the **16th Lok Sabha** were the agrarian crisis in the country, inflation, and various natural calamities.

Rule 184:

- The procedure for taking up an issue under this Rule is similar to that of Rule 193, with one exception. The issue is raised in the form of a motion. After the Minister's reply, the House votes on the motion. For example, in the **15th Lok Sabha**, motions were raised to require the government to take steps to contain inflation (motion adopted) and to disapprove Foreign Direct Investment in retail (motion denied).

Parliamentary Scrutiny

- **Methods of Scrutiny**
  - Discussion/Debate: Pointing out issues during legislative discussions
  - Question Hour: Questions on administration and government activity
  - Parliamentary Committees: Scrutinizing Bills through specialized committees
  - Finance Committees: Reviewing budgetary estimates and annual audit reports
  - Ad-hoc Committees: Examining regulators' workings
- **Reasons for Ineffectiveness**
  - Decreased Sessions: E.g. truncated sessions due to COVID-19
  - Disruptions: Question Hour often disrupted
  - Bypassing Committees: Fewer Bills referred to committees in recent times
  - Lack of Opposition Leadership: No effective leader to challenge government
- **Importance of Question Hour**
  - Ensures Accountability & Transparency: Covers all aspects of government activity
  - Government Accountability: Reveals the government's performance and stance
  - Addressing of Questions: Precision and scope for wider debates
  - Defining Government's Stand: Communicating the government's position publicly
- **Way Forward**
  - Restoration of Parliamentary Practices: Avoid restricting Question Hour and Zero Hour Further
  - Periodical Examination: NCRWC recommends reviewing DRSCs' relevance
  - Establishment of New Committees: Address complexities in economy and technology
  - Discussion of Committee Reports: Especially when differing from government views
  - Proactive Opposition: Vigilant in questioning government actions
  - Inclusion of Evaluation in Reports: As per 2nd ARC, include agreed evaluation parameters
  - MP Support: Provide expert resources for effective scrutiny
  - Responsibility and Rule Amendments: Ensure major Bills are reviewed by DRSCS

The Process of Law Making in India

- For a Bill to become an Act, it has to be passed by each House of Parliament and receive the assent of the President. **Parliament** has the **power to pass laws** relating to subjects under the **Union List** (such as defense or citizenship) or the **Concurrent List** (such as criminal procedures or family laws) of the Constitution. **Government Bills are introduced by Ministers** and **Private Member Bills by any other MP**. While the procedure to introduce and pass these Bills is the same in both the Houses, **only 14 Private Members Bills have ever been passed.**

Article	Provisions
107	❑ Provisions as to introduction and passing of bills
108	❑ Joint sitting of both the houses in certain cases
109	❑ Special procedure in respect of Money Bills
110	❑ Definition of Money Bills
111	❑ Assent to Bills
112	❑ Annual financial Statement
113	❑ Procedure in Parliament with respect to estimates
114	❑ Appropriation Bills
115	❑ Supplementary, additional or excess grants
116	❑ Votes on account, votes of credit and exceptional grants
117	❑ Special Provision as to financial bills

Types of Bills in the Parliament

The Primary function of Parliament is law-making. **Article 107 to 122 of the Constitution deals with the legislative procedure** with reference to the passing of the bills in the Parliament. The procedure is similar and identical in both Houses and the bills have to pass through the same stages in each house. Based on their content, bills can be further categorized into eight types:

1. **Original Bills:** These embody new proposals, ideas, or policies.
2. **Amending Bills:** These seek to modify, amend, or revise existing Acts.
3. **Consolidating Bills:** These aim to consolidate existing laws on a particular subject.
4. **Expiring Laws (Continuance) Bills:** These bills are intended to continue an expiring Act.
5. **Repealing Bills:** These seek to repeal existing Acts.
6. **Validating Bills:** These aim to give validity to certain actions.
7. **Bills to Replace Ordinances:** These bills are introduced to replace ordinances.
8. **Constitution (Amendment) Bills:** Bills related to amending the Constitution.
9. **Money and Financial Bills:** Bills pertaining to financial matters.

Based on the **required procedures for their passage in Parliament**, bills can be broadly categorized into **four types:**

1. **Ordinary Bills:** These address matters other than financial subjects**. Introduced in either house** and require **a simple majority in each house**.
2. **Money Bills:** These pertain to financial matters such as taxation and public expenditure. Introduced only in Lok Sabha and passed by a simple majority, however Rajya Sabha can recommend changes but Lok Sabha has the right to reject them. Rajya sabha must return or pass the bill within 14 days or it is deemed passed.
3. **Financial Bills:** Similar to money bills, these also deal with financial matters but are distinct.
4. **Constitution Amendment Bills:** These focus on amending the provisions of the Constitution. It can be introduced in either house.

IGNITE YOUR MIND

While the Constitution of India grants exclusive power to the Lok Sabha to introduce and pass Money Bills, its definition has been subject to interpretations and controversies. How can we ensure a clear and consistent application of the Money Bill provisions while upholding the principles of financial accountability and legislative balance?

Money Bill and Financial Bills can only be introduced in Lok Sabha , other bills can be introduced in either house of the Parliament .

Bills can be classified in other way as

Public Bills	Private Bills
❑ Introduced by the Minister	❑ Introduced by a member of Parliament other than a minister
❑ Reflects policies of government	❑ Does not reflect the policies of the government on public matters.
❑ Greater chance to be approved by the Parliament	❑ Lesser chance to be approved by the Parliament

❑ Rejection amounts to want of Parliamentary confidence in the government and may lead to its resignation.	❑ Rejection by the house does not imply the Parliamentary confidence in the government
❑ Introduction in the house requires seven days notice	❑ Introduction in the house requires one month notice
❑ Drafted by concerned department in consultation with the law department	❑ Its drafting is the responsibility of the member concerned.

❑ The Constitution has established distinct procedures for the enactment of each of these four types of bills.

Procedure for Introduction and Passing of Bills

❑ **Article 107** of the Constitution outlines the process for introducing and passing bills, and the key points are summarized as follows:

- A bill can be introduced in either House of Parliament, except for Money Bills and other financial bills, which have specific provisions under **Articles 109 and 117.**
- Unless there are different procedures specified in **Articles 108 (Joint sitting) and 109 (Money Bill),** a bill is considered passed by both Houses if it is agreed upon without amendments or with amendments agreed to by both Houses.

❑ When it comes to the **lapse of bills**, **Article 107** specifies the conditions:

- A **bill does not lapse due to the prorogation of the Houses of Parliament**. Unlike the British Parliamentary convention, where bills generally lapse upon prorogation**,** in India, **prorogation does not lead to the lapse of bills**.
- A **bill pending in the Rajya Sabha that has not been passed by the Lok Sabha does not lapse** when the Lok Sabha is dissolved.
- A **bill pending in the Lok Sabha, or passed by the Lok Sabha and pending in the Rajya Sabha, will lapse on the dissolution of the Lok Sabha.** This means bills introduced in the Lok Sabha, bills passed in the Lok Sabha and pending in the Rajya Sabha, and bills passed in the Rajya Sabha and pending in the Lok Sabha all lapse on the dissolution of the Lok Sabha.
- A **bill passed by both Houses and awaiting the President's assent does not lapse on the dissolution of the Lok Sabha.**

To Sum It up:

Ordinary Bill

A legislative proposal takes the form of a bill. For a bill to be considered passed by both Houses, it must receive agreement without amendment or with amendments that are mutually accepted. The process involves several stages before a bill transforms into an **Act of Parliament**, and this procedure is outlined in the Rules of Lok Sabha and Rajya Sabha. The key points of this process are summarized below.

(A) First Reading

- The **initiation of the legislative process begins with the introduction of a bill in either House** of Parliament, namely the Lok Sabha or the Rajya Sabha.
- A **bill can be presented by either a Minister or a private member**. In the former case, it is termed a Government Bill, and in the latter case, it is referred to as a Private Member's Bill.
- The **member-in-charge of the bill must seek leave (permission) to introduce the bill**. If the House grants leave, the bill is introduced.
- Once a bill is presented, **it is published in the Official Gazette.** There is also the possibility of a bill being published in the Gazette before its introduction, provided the Speaker grants permission. In such instances, there is no need to seek leave to introduce the bill, and it can be introduced directly.
- If there is opposition to the motion seeking leave (permission) to introduce a bill, the Speaker has the discretion to allow a brief explanatory statement from both the member opposing the motion and the member-in-charge who proposed it.
- In cases where the opposition is based on the argument that the bill exceeds the legislative competence of the House, the Speaker may permit a comprehensive discussion on the matter. Subsequently, the House votes on the question, and **if permission is granted, the bill is formally introduced.**

❑ **Sending a Bill to a Standing Committee**

- Once a bill is introduced, the **Presiding Officer** of the relevant House has the authority to send the bill to the **appropriate Standing Committee** for examination and the preparation of a report.
- In the event of a bill being referred to a **Standing Committee**, the Committee is tasked with **scrutinizing the general principles** and clauses of the bill and providing a report. The Committee may also seek expert or public opinions from those interested in the proposed measure.

- Upon completing its examination, the Committee presents its report to the House. While the report is not binding, it holds persuasive value and is regarded as considered advice offered by the Committee.

(B) Second Reading

- The second reading involves the examination of the bill, which occurs in two stages.

❑ First Stage

- The initial stage entails a broad discussion on the bill as a whole, where the underlying principles of the bill are deliberated.
- During this stage, the House has the option to refer the bill to a Select Committee of the House, **a Joint Committee of the two Houses**, circulate it to elicit opinions, or directly proceed with its consideration.
- If the bill is directed to a Select/Joint Committee, the Committee scrutinizes the bill clause by clause, similar to the House. Members of the Committee can propose amendments to various clauses.

❑ Second Stage

- The second phase of the second reading involves a detailed examination of the bill, considering each clause individually as presented in its original form or as reported by the Select/Joint Committee.
- During this stage, **discussions are held on every clause**, and there is an opportunity to propose amendments to them. Any amendments put forward but not withdrawn are subject to a vote by the House before the relevant clause is concluded. For an amendment to be incorporated into the bill, it must be accepted by a majority of members present and voting.

(C) Third Reading

- Following this, the member-in-charge has the option to propose the passage of the Bill, marking the commencement of the third reading.
- During this stage, the debate is limited to arguments either in favor or against the bill, without delving into unnecessary details. For the approval of an ordinary bill, a simple majority of members present and voting is required.

❑ Bill in the Other House

- Once a bill is approved by one House, it is forwarded to the other House with a message to that effect. In the second House, it undergoes the aforementioned stages, excluding the introduction stage.
- If both Houses agree, the bill is then submitted to the President for assent. In the event of a disagreement regarding amendments between the two Houses, it may necessitate a joint sitting. Only with the President's assent, who is an integral part of the Parliament, can a bill transform into law.

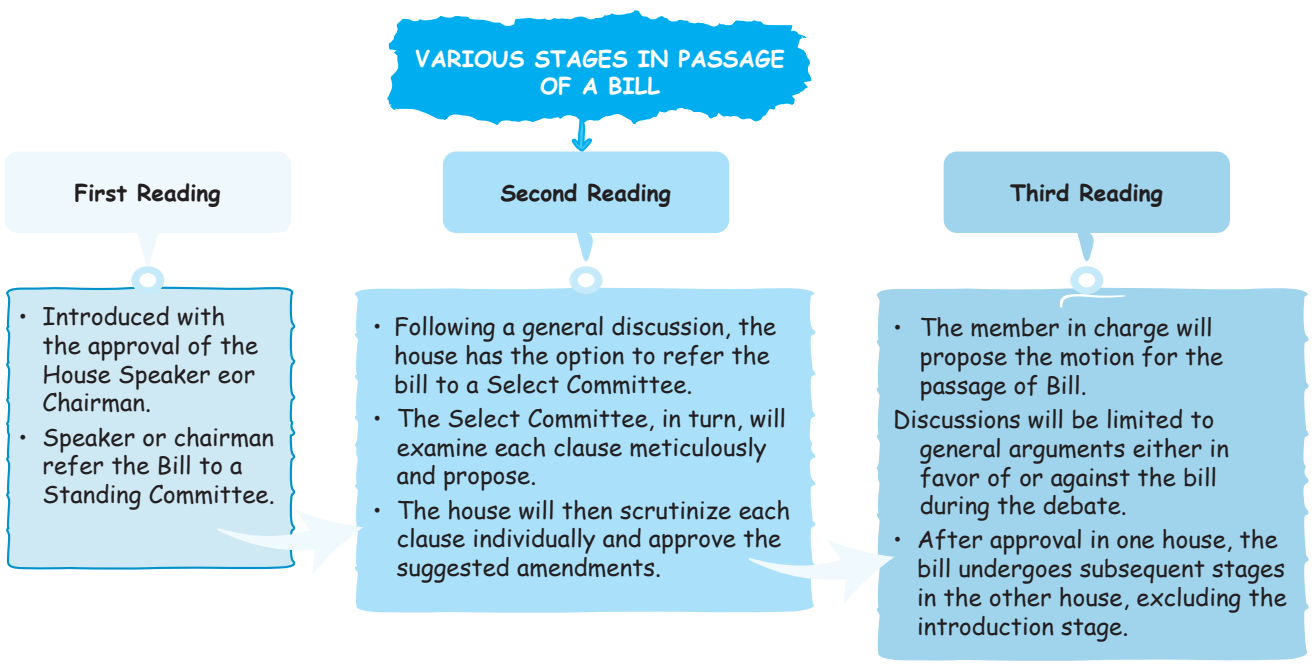

VARIOUS STAGES IN PASSAGE OF A BILL
First Reading
Introduced with the approval of the House Speaker eor Chairman.
Speaker or chairman refer the Bill to a Standing Committee.
Second Reading
Following a general discussion, the house has the option to refer the bill to a Select Committee.
The Select Committee, in turn, will examine each clause meticulously and propose.
The house will then scrutinize each clause individually and approve the suggested amendments.
Third Reading
The member in charge will propose the motion for the passage of Bill.
Discussions will be limited to general arguments either in favor of or against the bill during the debate.
After approval in one house, the bill undergoes subsequent stages in the other house, excluding the introduction stage.

Fig. 18.11: Various Stages in Passage of a Bill

Joint Sitting of the Two Houses

Conditions in which it can be held	Conditions in which it cannot be held	Procedure
❑ If a bill has been rejected by the other House. ❑ Disagreement between the Houses as to the amendments to be made. ❑ If the bill has elapsed for more than 6 months in the other House.	❑ If the bill is a Money Bill [Art 110]. ❑ If the bill is a Constitutional amendment bill [Art 368]. ❑ If the bill has already lapsed due to dissolution of the Lok Sabha.	❑ President summons joint sitting ❑ Presided over by the Speaker. ❑ Requires a simple majority of total members of both the houses present and voting to pass the bill.

Conditions for a Joint Sitting

- ❑ **Article 108** introduces the provision for a **joint sitting**, which serves as an extraordinary measure to resolve a deadlock between the two houses of Parliament when there is an impasse in passing a bill.
- ❑ The President is empowered to convene a joint sitting of both Houses of Parliament under the following circumstances after a bill being passed by one House and transmitted to the other House:
  - If the bill is **rejected by the other House**,
  - If the **Houses are in a final disagreement** regarding the amendments to be made in the bill,
  - If **more than six months have elapsed from the date of the bill's reception by the other House** without it being passed. In calculating the six months, any time during which the House is prorogued or adjourned for more than four consecutive days is not considered. Therefore, the six months are calculated only when the House is in session.
- ❑ In these circumstances, the **President, unless the bill has lapsed due to the dissolution** of the House of the People, **can notify** the Houses of the intention to summon them to meet in a joint sitting for deliberation and voting on the bill. If the President has given such notification, neither House can proceed further with the bill.

Joint Sitting Procedure and Related Provisions

- ❑ In the **event of a joint sitting of both Houses**, if the **bill,** along with any agreed-upon amendments, secures the approval of the majority of the total members present and voting, it is considered passed by both Houses for constitutional purposes. Here, a simple majority of the total members present and voting in the joint sitting is the required majority.
- ❑ There are **only two types of amendments allowed during a joint sitting**:
  - If a bill passed in one House faces non-passage in the other House, amendments are permitted only to address the delays in bill passage.
  - If a bill has been passed by the other House, amendments are allowed only on matters where the Houses have not reached an agreement.
- ❑ The Constitution empowers the **President, in consultation with the Chairman of the Rajya Sabha and the Speaker of the Lok Sabha**, to establish rules for the procedure of joint sittings (Article 118). The Lok Sabha rules include "The Houses of Parliament (Joint Sittings and Communications) Rules" in the Appendix.
  - The Speaker of the Lok Sabha presides over joint sittings. In the absence of the Speaker, the Deputy Speaker of the Lok Sabha, or if both are absent, the Deputy Chairman of the Rajya Sabha, or another person determined by the members present, presides. Notably, the Chairman of the Rajya Sabha does not preside over joint sittings as they are not a member of the Parliament.
  - The quorum required for a joint sitting is one-tenth of the total number of members from both Houses.
- ❑ It is essential to note that the provision for joint sittings applies **exclusively to ordinary and financial bills**. This provision **does not extend to Money bills,** which follow a distinct procedure under Article 109**.** Similarly, **constitutional amendment bill**s adhere to the procedure outlined in Article 368, making joint sittings inapplicable to such bills.

Instances of Previous Joint Sittings

- ❑ The necessity for a joint sitting arises primarily concerning a **government bill that has been approved in the Lok Sabha** but **faces a deadlock** favoring the **Rajya Sabha**. To address this, the Constitution has established a mechanism biased in favor of the Lok Sabha, given its larger membership (543 compared to 245 in the Rajya Sabha).
- ❑ Despite this provision being **invoked on three occasions** in the past, it's essential to note the bills that have undergone joint sittings:
  - **Dowry Prohibition Bill, 1960**
  - **Banking Service Commission (Repeal) Bill, 1972**
  - **Prevention of Terrorism Bill, 2002**

These instances illustrate that while a ruling government with a substantial Lok Sabha majority can resort to the joint

sitting mechanism, there is a consistent effort to foster consensus between the two Houses.

Money Bills

Article 109 outlines a distinctive procedure for Money Bills, summarized as follows:

- Money Bills **cannot** be introduced in **the Council of States;** they are exclusively **introduced in the Lok Sabha.**
- A Money Bill can only be **introduced with the President's recommendation (Article 117)**.
- **After the House of the People passes a Money Bill:**
  - It is sent to the **Council of States** for recommendations **after it is certified as a money bill by the Speaker.**
  - The **Council of States** must **return** the bill **within 14 days,** along with its recommendations.
  - The **House of the People can accept or reject** any or all of the Council of States' recommendations.
- **If the House of the People:**
  - **Accepts any of the Council of States' recommendations, the Money Bill is considered passed** by both Houses with the accepted amendments.
  - **Does not accept any recommendations, the Money Bill is deemed to have passed both Houses in its original form**, without the Council of States' amendments.
- If the Money Bill is **not returned** to the House of the People **within 14 days**, it is **considered passed by both Houses** in the form approved by the House of the People.

Special Procedure for Passing of Money Bills

- A Money Bill is completely within the purview of the Lok Sabha. The Rajya Sabha plays a recommendatory role in such bills, and its input can be overridden by the Lok Sabha. This dominance is justified because the provisions of a Money Bill exclusively pertain to financial matters critical for the administration of the country.
- The **Speaker of the Lok Sabha** has the **final say** on **whether a bill is a money bill**. This decision is **not challengeable in any court or by either House** of the Parliament.
- Since the elected government, enjoying a majority in the Lok Sabha, is accountable for the administration, the **Constitution outlines this distinctive procedure for Money Bills, requiring only the approval of the Lok Sabha.** It's crucial to note that the **defining characteristic in the below definition is the term "only."** Hence, **bills focusing solely on financial matters**, as per the definition, are categorized as Money Bills.

Article 110 provides the **definition of a Money Bill**, stating that a bill shall be deemed as such if it **contains provisions dealing solely** with:

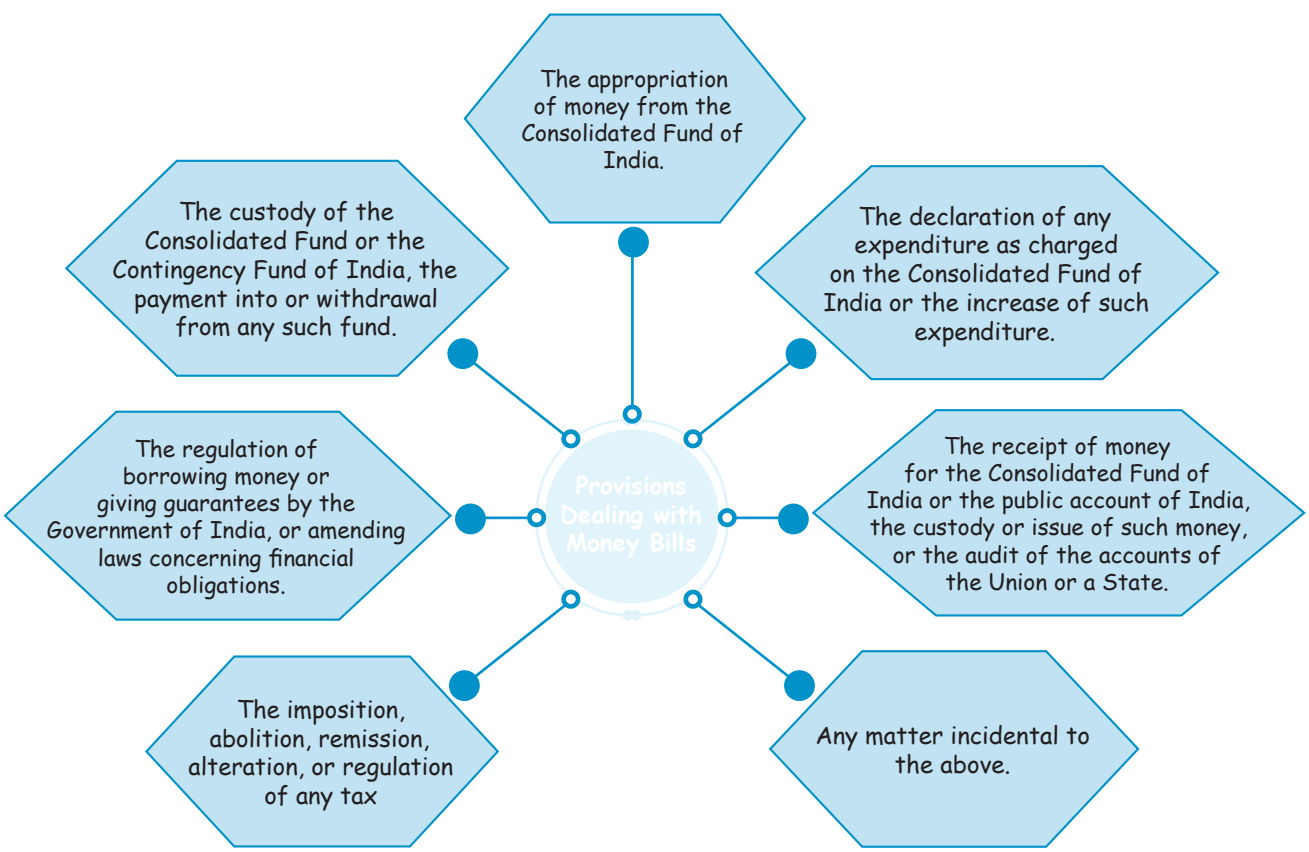

Provisions Dealing with Money Bills
The appropriation of money from the Consolidated Fund of India.
The custody of the Consolidated Fund or the Contingency Fund of India, the payment into or withdrawal from any such fund.
The declaration of any expenditure as charged on the Consolidated Fund of India or the increase of such expenditure.
The regulation of borrowing money or giving guarantees by the Government of India, or amending laws concerning financial obligations.
The receipt of money for the Consolidated Fund of India or the public account of India, the custody or issue of such money, or the audit of the accounts of the Union or a State.
The imposition, abolition, remission, alteration, or regulation of any tax
Any matter incidental to the above.

Fig. 18.12: Special Procedure for Passing of Money Bills

However, a bill is not considered a Money Bill solely because it involves fines, pecuniary penalties, fees for licenses or services, or the regulation of taxes by a local authority for local purposes.

Therefore, a bill focusing solely on finance or audit matters falls under the category of a Money Bill. In this context, a brief explanation of the various accounts maintained by the Government, forming part of the definition of a Money Bill, is provided below.

Aadhaar Judgment of 2018
❑ The **Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits, and Services) Act, 2016**, commonly known as the **Aadhaar Act**, aimed to give legal recognition to Aadhaar cards issued by the Government of India.
❑ It encompassed **provisions related to the formation of the Unique Identification Authority of India (UIDAI)**, the application process for Aadhaar cards, and the protection of residents' biometric data collected during the card issuance.
❑ Additionally, it mandated the use of Aadhaar cards for availing subsidies under various schemes funded from the Consolidated Fund of India.
❑ This legislation faced legal challenges in the Supreme Court, primarily on the grounds that it violated individual privacy (acknowledged as a Fundamental Right under **Article 21 in the Puttuswamy case**) and that it was unconstitutionally passed as a Money Bill. The latter argument arose from the contention that it did not exclusively pertain to matters specified in **Article 110 (1) (a) to (f)**.
❑ In its 2018 judgment, the Supreme Court upheld the passage of the Aadhaar Act as a Money Bill with a majority verdict of 4:1. Despite this affirmation, the judgment introduced the crucial notion that the certification of a bill as a Money Bill by the Speaker of the Lok Sabha is subject to judicial review.

Funds

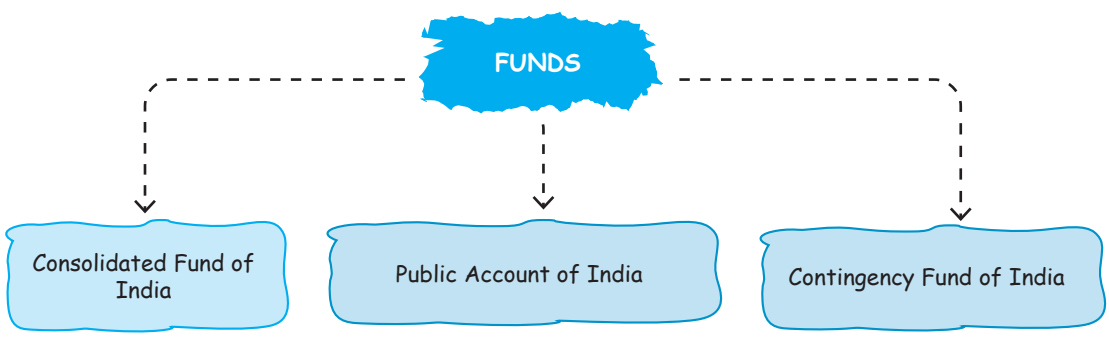


Fig. 18.13: Funds

The Constitution of India provides for the following three kinds of funds for the Central government:

Fund Name	Description related to the Fund	Operations and Authorizations
Consolidated Fund of India	❑ The Government of India consolidates all its revenues, loans, and repayments into a unified fund known as the **'Consolidated Fund of India'** as per **Article 266**. ❑ This includes income from taxes such as **Income Tax and GST, non-tax revenues like fees and royalties, loans obtained domestically and internationally, and money received when loans** are repaid to the Government of India. ❑ The Consolidated Fund of India is maintained with the Reserve Bank of India.	Expenditures must be authorized by law. No appropriation without Parliamentary approval.
Public Account of India	❑ Any **funds received by or on behalf of the Government of India, excluding those specified in the Consolidated Fund**, are to be credited to the Public Account of India according to **Article 266**. This includes diverse amounts such as **Provident fund, postal savings, national small savings fund, etc**., which are received by the government and are obligated to be repaid upon maturity.	Operated by executive action. Payments do not require Parliamentary appropriation.

Contingency Fund of India	❑ **Parliament** has the authority to create the **'Contingency Fund of India' through legislation**. The fund receives allocations as specified by Parliamentary law, and it is placed under the control of the President to address unforeseen expenses until authorized by Parliament **[Article 267]**. ❑ As a result, funds are transferred to this account through appropriations from the Consolidated Fund of India. The Central Government utilizes the resources in this account to cover unexpected expenses, such as those arising from natural calamities.	Amount is spent by the executive but is authorised by the Parliament **after the expenditure is incurred**. Held by the finance secretary on behalf of the President.

Expenditure Charged on Consolidated Fund of India

Article 110(1)(e) specifies that a bill dealing **exclusively** with **declaring any expenditure as charged on the Consolidated Fund of India** or increasing such expenditure qualifies as a Money Bill.

Article 112(3) outlines **specific expenditures charged on the Consolidated Fund of India**, including:

- ❑ Emoluments and allowances of the **President**, along with other expenses related to the President's office.
- ❑ Salaries and allowances of the **Chairman, Deputy Chairman of the Council of States, and the Speaker and Deputy Speaker** of the House of the People.
- ❑ **Debt charges** for which the **Government of India is liable**, including **interest, sinking fund charges, redemption charges, and other expenses** related to raising loans and servicing debt.
- ❑ Salaries, allowances, and pensions for Judges of the Supreme Court, and pensions for Judges of any High Court.
- ❑ Salary, allowances, and pension for the **Comptroller and Auditor General of India**.
- ❑ Sums necessary to satisfy any **judgment, decree, or award of any court** or arbitral tribunal.
- ❑ Any other expenditure declared by the Constitution or by Parliament through law to be charged.
- ❑ Additionally, various other expenses, such as salaries, allowances, and pensions of **UPSC members, administrative costs** including salaries, allowances, and pensions of staff in the **Supreme Court, CAG, and UPSC,** are also charged on the Consolidated Fund of India as specified in different articles of the Constitution.

The importance of "charged" expenditures lies in their non-votable nature in Parliament. While these expenses can be discussed in the houses of Parliament, the **Lok Sabha does not vote on them**. Instead, they are automatically "charged on the consolidated fund" and must be incurred as mandated.

Financial Bills

- ❑ Besides Money Bills, as defined under **Article 110(1)** with a special procedure for passage, the Constitution, under Article 117, outlines Financial Bills that also address financial matters.
- ❑ A Financial Bill of Category A (or Category I) includes provisions related to matters specified in Article 110(1) and other matters of general legislation (Art 117).
- ❑ It is essential to note that a **Bill dealing only with matters specified in 110(1) is a Money Bill**, whereas a Bill addressing those matters along with other general issues is a Financial Bill of Category A.
  - **For instance,** a Bill focused on land acquisition for government projects may also cover provisions regarding borrowings by the Government of India to meet the acquisition's cost. This falls under a Financial Bill of Category A as it involves provisions related to borrowings (110(1)(b)] along with land acquisition procedures.
- ❑ **Similar** to the procedure for introducing a **Money Bill,** a **Financial Bill of Category A** can be **introduced only in the Lok Sabha** and **solely on the President's recommendation [Art 117)**. However, once passed by the Lok Sabha, it is **treated like any other ordinary Bill**, and the Rajya Sabha has no restrictions on its powers regarding such bills. Any disagreements between the two Houses can only be resolved through a joint sitting.
- ❑ **Financial Bills of Category B (or Category II)** encompass bills that involve expenditure from the Consolidated Fund of India but do not include any of the matters specified in sub-clauses (a) to (f) of clause (1) of Article 110 and are classified as Financial Bills of Category B [Art 117].
  - **For example,** the **President's Emoluments and Pension Act** provides various facilities like free travel and free telephone facilities to retired Presidents and spouses of deceased Presidents. These provisions do not deal with matters specified in Article 110(1)(a) to (f) but involve expenditure from the Consolidated Fund of India. This aspect of such a Bill would fall under a Financial Bill of Category B.
- ❑ **Financial bill Category B,** similar to a regular bill, can be introduced in either the Lok Sabha or the Rajya Sabha without the necessity of the President's recommendation during its introduction. The only requirement for these bills is that the President's

recommendation is needed before the house where it is introduced considers the bill. The passage of this bill follows the standard procedure for any ordinary bill, and in case of disagreement between the two Houses, resolution can only be achieved through a joint sitting.

Constitution Amendment Bills

- A Constitution Amendment Bill may be introduced in either House.
- It is required to be passed by more than 50% of the total membership of each House and at least two-thirds of the members present and voting.
- There is no provision of Joint session.
- Certain Bills (such as those amending the list of subjects in the Union/State/Concurrent List) also have to be ratified by at least 50% of the state legislatures by simple majority.
  - **For example**, the 2016 Constitution Amendment Bill introducing GST was ratified by more than 50% of the states. Constitutional amendments bills are dealt in the chapter "**The Making of the Constitution**".
- The President is bound to give his/her assent to the bill if it has been passed in accordance with provisions of Article 368.

Parliamentary Budget

- The Constitution describes the budget as the **'annual financial statement.'** To put it differently, the **Constitution does not use the term 'budget.'** Instead, it refers to the 'annual financial statement,' as outlined in **Article 112** of the Constitution.
- The Constitution specifies that the President shall in respect of every financial year cause to be land before both the Houses of Parliament, a statement of estimated receipts and expenditure of the Government of India in a financial year, which begins on 1st April and ends on 31st March of the following year.

In addition to the estimates of receipts and expenditure, the budget contains certain other elements. Overall, the budget contains the following:

- Estimates of revenue and capital receipts;
- Ways and means to raise the revenue;
- Estimates of expenditure;
- **Details of Past Financial Year:** Information on actual receipts and expenditures from the preceding financial year, along with explanations for any deficit or surplus.
- Economic and Financial Policy for the Future: This includes taxation proposals, revenue expectations, spending programs, and the introduction of new schemes or projects for the upcoming year.

Constitutional Provisions Regarding Budget Enactment:

- For every financial year, the **President is required** to present a statement of the **estimated receipts and expenditure of the Government of India** to both Houses of Parliament **(Article 112)**.
- **No demand for a grant can be made** without the recommendation of the **President (Article 113)**.
- **Withdrawal of money** from the Consolidated Fund of India is **only permitted** under appropriation made by law **(Article 114)**.
- A **money bill imposing tax** must be introduced in Parliament only on the **recommendation** of the **President** and cannot be introduced in the Rajya Sabha **(Article 117)**.
- **Taxation** cannot be levied or collected except by authority of law **(Article 265)**.
- While **Parliament** can reduce or abolish a tax, it **cannot increase it (Article 117)**.
- The **Constitution outlines the roles of both Houses** of Parliament in the budget enactment:
  - A **money bill or finance bill** dealing with taxation must be introduced only in the Lok Sabha **(Article 109)**.
  - The **Rajya Sabha has no power to vote on demands for grants**; it is the exclusive privilege of the Lok Sabha **(Article 113)**.
  - The **Rajya Sabha should return the money bill** (or finance bill) to the Lok Sabha within fourteen days. The Lok Sabha can either accept or reject the recommendations made by the Rajya Sabha in this regard **(Article 109)**.
- The **budget's estimates of expenditure** must separately show the expenditure charged on the Consolidated Fund of India and the expenditure made from it **(Article 112)**.
- The **budget** must distinguish expenditure on revenue accounts from other expenditures **(Article 112)**.
- **Expenditure charged** on the Consolidated Fund of India is not subject to the vote of Parliament **but can be discussed by the Parliament (Article 113)**.
- The Lok Sabha can approve, refuse, or reduce any demand but cannot increase it **(Article 113)**.
- **No amendment** can be proposed to the appropriation bill that alters the amount or destination of any grant voted or changes the amount of any expenditure charged on the Consolidated Fund of India **(Article 114)**.
- The **Lok Sabha can make a grant in advance (Vote on Account)** in respect to the estimated expenditure for a part of the financial year pending the completion of voting for demands for grants and the enactment of the appropriation bill **(Article 116)**.

Presentation of Budget in the Parliament

- Traditionally, the finance minister used to present the budget to the Lok Sabha on the last working day of February. However, since 2017, the budget presentation has been **moved up to the 1st of February**.

- Alternatively, the **Budget can be presented in two or more parts**. In such cases, each part is treated as if it were the complete budget. Notably, there is no discussion on the budget on the day it is presented to the House.
- The finance minister introduces the budget along with a speech referred to as the 'budget speech.' After the speech in the Lok Sabha, the **budget is placed before the Rajya Sabha**. The Rajya Sabha can discuss the budget but lacks the authority to vote on the demands for grants. Some important documents that are tabled at the time of presentation of the Union Budget include the following:
  - Budget Speech
  - Annual Financial Statement
  - Demands for Grants
  - Appropriation Bill
  - Finance Bill
  - Statements mandated under the FRBM Act:
    (a) Macro-Economic Framework Statement
    (b) Fiscal Policy Strategy Statement
    (c) Medium Term Fiscal Policy Statement
  - Expenditure Budget
  - Receipts Budget
  - Expenditure Profile
  - Memorandum Explaining the Provisions in the Finance Bill
  - Budget at a Glance
  - Outcome Budget (Output-outcome monitoring framework)
- The **Economic Survey was traditionally** presented to the Parliament **concurrently with the budget**. However, the current practice involves presenting it a day or a few days before the budget presentation. Prepared by the finance ministry, this report provides an overview of the current state of the national economy.

Railway Budget Merger:

- Until 2017, the Government of India operated with two separate budgets:
  - Railway Budget: Exclusively detailed the estimates of receipts and expenditures for the Ministry of Railways,
  - General Budget: Encompassed the estimates for all other ministries of the Government of India, excluding the railways.
- The division between the Railway Budget and the General Budget originated in 1924 following recommendations from the Acworth Committee Report (1921). The key objectives for this separation were:
  1. Introducing flexibility in railway finance.
  2. Facilitating a business-oriented approach to railway policy.
  3. Ensuring stability of general revenues through a guaranteed annual contribution from railway revenues.
  4. Allowing railways to retain their profits for independent development, after making a fixed annual contribution to general revenues.
- However, in 2017, the Central Government decided to merge the Railway Budget into the General Budget.

General discussion

- The comprehensive discussion on the budget typically commences a few days following its presentation. This discourse occurs in both Houses of Parliament and typically spans three to four days.
- Throughout this phase, the Lok Sabha has the liberty to deliberate on the budget in its entirety or focus on any fundamental question related to it. However, no cut motion can be proposed, and the budget cannot be subjected to a vote. The Finance Minister retains the right to provide a general response at the conclusion of the discussion.

Scrutiny by Departmental Committees

- Following the conclusion of the general budget discussions, the Houses go into adjournment for approximately three to four weeks. During this interim period, the Parliament's 24 departmental standing committees thoroughly examine and discuss the demands for grants associated with the respective ministers. Subsequently, they formulate detailed reports on these matters, which are then presented for consideration to both Houses of Parliament.
- The **standing committee system, initiated in 1993** and **expanded in 2004**, **enhances the Parliamentary financial oversight of ministries** by providing a more detailed, close, in-depth, and comprehensive examination.

Voting on Demands For Grants

- After the recess, a **discussion takes place on the Demand For Grants ministry-wise,** followed by a vote in the Lok Sabha.
- Two important points should be highlighted in this context. Firstly, the exclusive authority to vote on demands for grants lies with the Lok Sabha; the Rajya Sabha does not possess the power to vote on these demands. Secondly, the voting process is restricted to the votable section of the budget, as the expenditure charged on the Consolidated Fund of India is not subject to a vote; it can only be discussed.

- Each demand is individually voted upon by the Lok Sabha during this stage. Members of Parliament can delve into the details of the budget and propose motions to reduce any demand for a grant. These motions, termed 'cut motions,' come in three types:
  - **Policy Cut Motion:** This signals disapproval of the policy underlying the demand, suggesting a reduction in the demand to ₹1. Members can also propose an alternative policy.
  - **Economy Cut Motion:** This highlights potential savings in the proposed expenditure. It proposes a specified reduction in the demand, either as a lump sum or the omission or reduction of an item in the demand.
  - **Token Cut Motion:** This addresses a specific grievance within the responsibility of the Government of India, proposing a reduction of ₹100 in the demand.

For a cut motion to be admissible, it must meet certain conditions:

- It should pertain to a single demand.
- It must be clearly expressed and free from arguments or defamatory statements.
- It should focus on one specific matter.
- It must not suggest amendments or the repeal of existing laws.
- It should address matters primarily concerning the Union government.
- It must not relate to expenditure charged on the Consolidated Fund of India.
- It should not concern a matter under court adjudication.
- It should not raise a question of privilege.

- The **significance of a cut motion** lies in initiating **concentrated discussion on a specific demand for grants and upholding the principle of responsible government** by scrutinizing government activities.
- However, **in practice, cut motions are often moved and discussed but not passed**, as the government typically enjoys majority support. Their passage by the Lok Sabha signifies an expression of Parliamentary lack of confidence in the government and may lead to its resignation

On the last day of the days allotted for discussion ,**other Demand for Grants are 'guillotined**', i.e. they are voted upon together. **After the Demand for Grants are passed**, they are **consolidated for passage into an Appropriation Bill**. This Bill seeks to withdraw funds from the Consolidated Fund of India for the sanctioned expenditure. No changes can be made to the Appropriation Bill to alter the voted grants or the expenditure charged on the Consolidated Fund of India.

The Finance Bill is also taken up for consideration and passing. This Bill includes all the proposed amendments to the various tax laws. According to the **Provisional Collection of Taxes Act,1931 the financial bill must be passed within 75 days**. The Rajya Sabha only has a recommendatory role in passing the Appropriation and Finance Bills as they are Money Bills.

In **addition to the Budget** that contains the ordinary estimates of income and expenditure for one financial year, various other grants are made by the Parliament under extraordinary or special circumstances:

Types of Grants

- **Supplementary Grant (Article 115):** Issued when Budgeted funds are insufficient for a particular service for the year.
- **Additional Grant (Article 115) :** Allocated for new services, unforeseen at the budget's formulation.
- **Excess Grant (Article 115) :** Provided when spending exceeds the budgeted amount, it requires Lok Sabha vote post-financial year and approval by the Public Accounts Committee.
- **Vote of Credit (Article 116):** For unexpected demands, akin to a blank cheque from Lok Sabha to the Executive, due to the service's large scale or indefinite nature.
- **Exceptional Grant (Article 116):** Given for special purposes outside of the regular services of the financial year.
- **Token Grant:** Approved when the expense on a new service is met through reappropriation; entails voting for a token sum (Re 1) to reallocate funds, without additional spending.

Passing of Appropriation Bill (Article 114)

- The Constitution stipulates that **"no money shall be withdrawn from the Consolidated Fund of India except under appropriation made by law."** Following the voting and approval of grants by the Lok Sabha, an Appropriation Bill is introduced. This bill aims to allocate funds from the Consolidated Fund of India for:
  - Grants voted by the Lok Sabha.
  - Expenditure charged on the Consolidated Fund of India.
- No amendments can be proposed to the appropriation bill in either house of Parliament that would alter the amount or destination of any voted grant or the amount of any expenditure charged on the Consolidated Fund of India.
- Upon receiving the President's assent, the Appropriation Bill becomes the Appropriation Act. This act **legitimizes payments from the Consolidated Fund of India,** signifying that the government cannot withdraw money from it without the enactment of the appropriation bill. This process typically extends until the end of April.
- However, as the government requires funds to sustain normal activities beyond March 31 (the end of the financial year), the Constitution authorizes the Lok Sabha to make a grant in advance for part of the financial

year. This provision, known as the **'Vote on Account,'** is granted after the general budget discussion and is usually for two months, equivalent to one-sixth of the total estimate.

- In an election year, when the Lok Sabha is dissolved or a new Lok Sabha is constituted, the **Vote on Account may be extended for a longer period, typically 3 to 5 months.**
- Since 2017, the Budget session has been advanced to January 31, with the Union Budget presented on February 1. This change aims to eliminate the need for a Vote on Account by enabling Parliament to pass a single Appropriation Bill before the end of the financial year.
- In the year of General Elections to the Lok Sabha, an Interim Budget is presented. After the elections and the assumption of office by the new government, the Regular Budget is presented on a date determined by the new government.

Passing of the Finance Bill

- The term **'Finance Bill'** refers to the bill **typically introduced every year** to put into effect the **financial plans of the Government of India for the upcoming fiscal year**. This bill encompasses proposals for supplementary financial matters for any specific period. It is subject to the same conditions as a Money Bill. Unlike the Appropriation Bill, amendments, including those aiming to reject or reduce a tax, can be proposed for the Finance Bill.
- During this stage, members have the opportunity to discuss various topics, such as general administration, local grievances falling under the Government of India's jurisdiction, or the government's monetary and financial policies.
- **As per the Provisional Collection of Taxes Act of 1931**, the **Finance Bill** must be enacted—meaning passed by Parliament and approved by the President—**within 75 days**. The **Finance Act serves to legalize the income side of the** budget and concludes the **budget enactment process**.

Multi-functional Role of Parliament

- In the 'Indian politico-administrative system,' the Parliament holds a central position and plays a diverse role. It has broad powers and carries out various functions in line with its constitutionally assigned responsibilities. These powers and functions can be categorized as follows:

Legislative Powers and Functions

- The main role of Parliament is to create laws that govern the country. It holds exclusive authority to legislate on subjects listed in the Union List, which currently contains 98 subjects (originally 97).
- Additionally, it has power over residual subjects not covered in any of the three lists.In the Concurrent List, which presently comprises 52 subjects (originally 47), Parliament has overriding powers. This means that if there's a conflict between laws made by the state legislature and Parliament, the latter's law takes precedence.
- The Constitution empowers Parliament to legislate on State List subjects (currently 61, originally 66) under specific circumstances, including:
  - When the Rajya Sabha passes a resolution
  - During a National Emergency,
  - Upon a joint request from two or more states
  - To implement international agreements, treaties, and conventions
  - When the President's Rule is in effect in a state.

Ordinances:

- The Constitution under **Article 123** permits the President to promulgate an Ordinance when:
  - The Parliament is not in session, and
  - Immediate action is required.
- These Ordinances have the effect of law. However, Ordinances are required to be approved by Parliament within six weeks of the commencement of the next session of Parliament, otherwise, they lapse. In the 16th Lok Sabha, 55 Ordinances were issued on various subjects including land acquisition and demonetisation. At the time of introduction of the Bill replacing the Ordinance, a member may table a resolution disapproving the introduction of the Ordinance. If a resolution disapproving the Ordinance is passed by both Houses, the Ordinance lapses.

Subordinate Legislation:

- Most laws provide for Rules and Regulations to be framed and notified by the government and other authorities after a Bill is passed. These are known as subordinate legislation and include Rules, Regulations, Orders, Schemes, and Bye-laws. The Committee on Subordinate Legislation scrutinizes and reports on the Rules and Regulations framed.
- After the Rules have been tabled, MPs may move a motion seeking an annulment or modification of the Rules. If the motion is adopted in one House, it is transmitted to the other House for approval. In a new Lok Sabha, fresh Bills may be introduced in either House. Further, Bills introduced in Rajya Sabha in the previous Lok Sabha, carry on to the next Parliament. If both Houses amend or repeal the Rules, they will be modified accordingly.

- **Any ordinances** issued by the **President during Parliament's recess** must **receive approval within six weeks of its reassembly**. Failure to do so renders the ordinance inoperative.
- **Parliament typically formulates laws** in a broad framework and authorizes the Executive to create detailed rules and regulations within that framework.

This process, known as delegated legislation or executive legislation, involves presenting these rules and regulations to Parliament for examination.

Executive Powers and Functions

- The Constitution of India established **a Parliamentary form of government**, where the Executive is accountable to the Parliament for its policies and actions. In this setup, the Parliament exercises control over the Executive through various means such as **question-hour, zero hour, half-an-hour discussion, short-duration discussion, calling attention motion, adjournment motion, no-confidence motion, censure motion**, and other discussions.
- Additionally, it oversees the Executive's activities with the help of committee**s** like the committee on **government assurances, committee on subordinate legislation, committee on petitions, etc.**
- The ministers collectively hold responsibility to the Parliament in general and specifically to the Lok Sabha. As part of this collective responsibility, **each minister is individually accountable for the efficient administration of their respective ministry**.
- Essentially, ministers remain in office as long as they maintain the confidence of the majority members in the Lok Sabha. In simpler terms, the council of ministers can be removed from office by the Lok Sabha through the passage of a no-confidence motion.
- The Lok Sabha can express lack of confidence in the government through various means, including:
  - Not passing a motion of thanks on the President's inaugural address
  - Rejecting a money bill
  - Passing a censure motion or an adjournment motion,
  - Defeating the government on a vital issue, or passing a cut motion.
- Therefore, the primary role of Parliament is to select the group forming the government, support and sustain it in power as long as it has confidence, and remove it when it loses that confidence, leaving the decision to the people in the next general election.

Financial Powers and Functions

- **No taxation can be imposed or funds collected, and no expenses** can be undertaken by the Executive **without the authority and approval of Parliament**. Consequently, the **budget is presented to Parliament for its endorsement**. The Parliamentary enactment of the budget legitimates the government's receipts and expenditures for the upcoming financial year.
- The Parliament exercises oversight over government spending and financial performance through its financial committees, which include the:
  - Public accounts committee
  - Estimates committee
  - Committee on public undertakings
- These committees identify instances of inefficiency, irregularities, unauthorized actions, improper usage, and extravagance in public expenditure.

IGNITE YOUR MIND

Despite the existence of oversight mechanisms like the Public Accounts Committee and other parliamentary committees, concerns persist about the effectiveness of financial accountability in India. How can we strengthen these institutions and empower them to effectively ensure transparency, accountability, and efficient utilization of public funds?

Parliamentary control over the Executive in financial matters operates in two stages:

- **Budgetary Control:** This involves oversight before the appropriation of grants through the enactment of the budget.
- **Post-budgetary Control**: This entails scrutiny after the appropriation of grants through the three financial committees.

The **budget adheres to the principle of annuity**, meaning that Parliament allocates funds to the government for one financial year. Unspent funds by the end of the financial year expire and return to the Consolidated Fund of India, following the **'rule of lapse.'** While this rule ensures effective financial control by Parliament and prevents the creation of reserve funds without authorization, it often results in a significant expenditure rush towards the end of the financial year, commonly referred to as the **'March Rush.'**

Constituent Powers and Functions

- The **Parliament possesses the authority to modify the Constitution** through the addition, alteration, or repeal of any provision. The majority of the Constitution can be amended by the Parliament with a special majority, requiring a majority of the total membership of each House and a majority of not less than two-thirds of the members present and voting in each House.
- Some provisions can be amended with a simple majority, meaning a majority of the members present and voting in each House of Parliament. A limited number of provisions necessitate a special majority from the Parliament and the consent of at least half of the State Legislatures, obtained through a simple majority.

- It is important to note that the exclusive power to initiate the amendment process of the Constitution in all three cases lies with the Parliament and not the state legislature. However, there is a singular exception; the state legislature can pass a resolution requesting the Parliament to create or abolish the legislative council in the state. Following such a resolution, the Parliament enacts a law amending the Constitution accordingly.
- In summary, the **Parliament can amend the Constitution in three ways**: by **simple majority, by special majority, and by special majority with the consent of half of all state legislatures**. The constitutional power of the Parliament is not unrestricted; it is subject to the 'basic structure' of the Constitution. In other words, the Parliament can amend any provision except the **'basic features'** of the Constitution, as determined by the Supreme Court in the **Kesavananda Bharati case (1973)**.

Judicial Powers and Functions

The Parliament possesses judicial powers and functions, encompassing the ability to:

- Initiate impeachment proceedings against the President for constitutional violations.
- Remove the Vice-President from office.
- Recommend the removal of judges, including the Chief Justice, from the Supreme Court and high courts, as well as the Chief Election Commissioner, State Election Commissioner, and Comptroller and Auditor General, to the President.
- Impose sanctions on its members or external individuals for the violation of its privileges or contempt.

Electoral Powers and Functions

- The **Parliament plays a role in the election of the President**, in conjunction with the state legislative assemblies, and is responsible for electing the Vice-President.
- The Lok Sabha conducts the election for its Speaker and Deputy Speaker, while the Rajya Sabha carries out the election for its Deputy Chairman.
- Additionally, the Parliament is granted the authority to legislate on the rules governing elections for the positions of President and Vice-President, as well as for both Houses of Parliament and both Houses of state legislatures.
- In line with this authority, Parliament has enacted various laws such as the **Presidential and Vice-Presidential Elections Act (1952)**, the **Representation of the People Act (1950), and the Representation of the People Act (1951), and others**.

Other Powers and Functions

The Parliament possesses various powers and functions, including:

- Serving as the **highest deliberative body in the country,** engaging in discussions on various issues of national and international significance.
- Granting approval for all three types of emergencies (national, state, and financial) declared by the President.
- Having the authority to establish or abolish state legislative councils based on recommendations from the respective state legislative assemblies.
- Exercising the capability to modify the area, boundaries, and names of states within the Indian Union.
- Regulating the organization and jurisdiction of the Supreme Court and high courts, with the ability to establish a common high court for two or more states.

Ineffectiveness of Parliamentary Oversight

The efficacy of Parliamentary control over government and administration in India is more of a theoretical concept than a practical reality. Several factors contribute to the limited effectiveness of this control:

Time and Expertise Constraints

- The Parliament faces limitations in both time and expertise, making it difficult to effectively oversee the administration, which has grown in both volume and complexity.

Technical Demands for Grants

- The technical nature of demands for grants hinders Parliament's financial control. Parliamentarians often lack the necessary expertise in these matters, leading to an incomplete understanding of the financial implications.

Executive Influence on Legislative Leadership

- The Executive holds significant influence over legislative leadership, playing a crucial role in policy formulation. This influence can undermine Parliament's independence in overseeing the administration.

Unwieldy Size of Parliament

- The sheer size of Parliament makes it unwieldy and difficult to manage, affecting its overall effectiveness in carrying out its oversight responsibilities.

Executive's Majority Support

- The Executive's majority support in Parliament diminishes the likelihood of robust criticism and oversight. This can lead to a lack of accountability and hinder effective parliamentary control.

Post-Expenditure Examination by Financial Committees

- Financial committees, like the Public Accounts Committee, engage in post-expenditure examination, limiting their impact on pre-emptive financial control. This reactive approach may not be sufficient to prevent financial irregularities.

Guillotine Procedure Restricts Financial Control

- The increased use of the 'guillotine' procedure narrows the scope of financial control. This procedural shortcut limits Parliament's ability to scrutinize financial matters thoroughly.

Delegated Legislation Enhances Bureaucratic Powers

- The prevalence of 'delegated legislation' reduces Parliament's role in detailed lawmaking, enhancing bureaucratic powers. This can lead to a concentration of power in the hands of the Executive.

Frequent Presidential Ordinances Dilute Legislative Power

- Frequent ordinances issued by the President dilute the legislative power of Parliament. This undermines Parliament's primary role in lawmaking.

Sporadic and General Parliamentary Control

- Parliamentary control is sporadic, primarily general, and often takes on a political nature. This focus on political maneuvering may detract from effective oversight of the administration.

Absence of Robust Opposition and Parliamentary Misconduct

- The absence of a robust and consistent opposition, coupled with setbacks in Parliamentary behavior and ethics, further contributes to the ineffectiveness of legislative control over administration in India.

Position of Rajya Sabha vis-a-vis Lok Sabha

The examination of the Constitutional status of the Rajya Sabha in comparison to the Lok Sabha can be approached from three perspectives.

Equal Status with Lok Shabha

- ❑ In the introduction and passage of ordinary bills, Constitutional amendment bills, financial bills involving expenditure from the Consolidated Fund of India.
- ❑ In the **election and impeachment of the President.**
- ❑ In the **approval of ordinances** issued by the President.
- ❑ Introduction and approval of financial bills involving expenditure from the Consolidated Fund of India.
- ❑ Making recommendations to the President for the removal of the Chief Justice and judges of the Supreme Court and high courts, the Chief Election Commissioner, and the Comptroller and Auditor General.
- ❑ Examination of reports from constitutional bodies such as the Finance Commission, Union Public Service Commission, Comptroller and Auditor General, etc.
- ❑ Expansion of the jurisdiction of the Supreme Court and the Union Public Service Commission.
- ❑ In the **approval of proclamation of emergency** by the President.

Reduced Status than Lok Sabha

- ❑ Money bill can be introduced in Lok Shabha. Lok Sabha can also accept or reject any recommendations of Rajya Sabha on Money bill.
- ❑ The final decision on whether a particular bill is a Money Bill or not rests with the Speaker of the Lok Sabha.
- ❑ Council of Ministers are accountable only to Lok Shabha. Lok Sabha can pass a no-confidence motion to remove the Council of Ministers.
- ❑ Rajya Sabha has a reduced status than Lok Sabha in the joint sittings of both the houses in case of a deadlock over a bill. The Speaker of Lok Shabha presides over the joint sittings. Lok Sabha also has more members and hence more voting power.
- ❑ Only Lok Sabha can pass a resolution by a simple majority disapproving its continuation. The emergency will immediately become inoperative in such a case.

Special Power of Rajya Sabha

- ❑ To initiate a resolution to remove the Vice-President. **(Article 67)**
- ❑ To pass a resolution to declare that it is necessary or expedient in the national interest to **create one or more All-India Services. (Article 312)**
- ❑ To empower the **Parliament to make laws on a matter in the State List. (Article 249)**

Is Rajya Sabha losing its Relevance?

- ❑ Since June 2014, the Rajya Sabha has undergone 18 sessions with 329 sittings, passing 154 Bills. This translates to less than one Bill for every two sittings, indicating a decline in legislative productivity. A comparison reveals a drop from 188 Bills cleared in 2009-2014 to 251 Bills in 2004-09.
- ❑ The Upper House has faced challenges in functioning, experiencing disruptions that have led to its inability to operate for 40% of the allocated time since 2014. In a specific instance, during the Budget session, out of the allotted 48 hours, the house only functioned for eight hours.

- The Chairman of the Rajya Sabha recently presented a "report to the people," addressing the subpar performance of the Upper House and emphasizing the importance of holding legislative bodies accountable.

Several factors contribute to the low productivity of the Rajya Sabha:

- **Political Tussle:** Ongoing conflicts between the government and opposition frequently result in the stalling of the House's functioning, leading to adjournments and disruptions.
- **Lack of Consensus:** The data also suggests a lack of consensus on numerous issues, indicating a challenge for the government in garnering opposition support.
- **Politicisation of the Rajya Sabha:** The tendency for the Rajya Sabha to be politicized has diverted it from its intended role as a serious deliberative body, which should provide crucial insights on matters of public importance.

- If the President issues a proclamation for imposing national emergency, President's rule, or financial emergency when the Lok Sabha is dissolved or if its dissolution occurs within the allowed period for approval, the proclamation can remain effective even if approved by the Rajya Sabha alone
- Upon analysis, it becomes evident that the position of the Rajya Sabha in our constitutional system is neither as weak as the House of Lords in the British constitutional system nor as strong as the Senate in the American constitutional system.

Significance of Rajya Sabha:

- **Permanency and Stability:** Unlike the Lok Sabha, the Rajya Sabha remains a permanent house and is never dissolved. This feature ensures continuity in leadership and stability during times when the Lok Sabha is not in session, serving as a crucial aspect of the nation's governance.
- **Check Against Abrupt Changes:** Acting as a check against abrupt changes in the composition of the Lower House, the Rajya Sabha provides a level-headed and non-populist perspective on bills and issues. This helps prevent hasty decision-making driven by populist compulsions in the Lok Sabha.
- **Guardian of States' Interests:** With representatives from the states, the Rajya Sabha plays a pivotal role in reflecting and safeguarding the interests of the individual states. This ensures a balanced representation of regional concerns at the national level.
- **Platform for Experts:** The Rajya Sabha serves as a platform for experts in various fields to contribute their insights on crucial legislative matters. This inclusion of expertise enhances the quality of discussions and decision-making within the legislative process.
- **Sharing Legislative Burden:** Given the increasing demand worldwide for legislation in newer areas, the Rajya Sabha becomes a valuable institution in sharing the legislative burden with the Lok Sabha. This collaborative effort is essential in addressing the complex challenges faced by modern legislatures.

Criticism of Rajya Sabha:

- **Reduced Significance:** On the matters of importance like the money bill and the budget, Rajya Sabha has little say which reduces its significance compared to Lok Sabha.
- **Chamber for political end seekers**: The Upper House has become a ground for party fund-raisers, those who lost in elections, crony capitalists, journalists, retired CEOs and civil servants.
- **Hindrance to speedy Legislation:** Given the competitive politics today, Rajya Sabha is also used by opposition parties to hinder speedy legislation, which is detrimental to the growth of the nation.
- **Frequent disruptions** in recent times is also undermining the deliberative and accountability functions of the upper house.

Constitutional Provisions for Parliamentary Privileges:

- **Articles 105 and 122:** Parliament Privileges
- **Article 105:** Freedom of Speech in Parliament, No liability for MP's in court for Parliament speech/vote.
- **Article 122:** Validity of Parliament proceedings not questionable in court, No questioning on grounds of procedural irregularity.
- **Articles 194 and 212:** State legislature Privileges
- **Articles 194:** Freedom of Speech in State legislature, No liability for members in court for state legislature speech/vote.
- **Article 212:** Validity of state legislature proceedings not questionable in court, No questioning on grounds of procedural irregularity.

Suggestions to Improve the functioning of Parliament

- **Legislative Measures:** Parliament (Enhancement of Productivity) Bill, 2017 should be taken up which seeks to fix the minimum number of days (100 days for Rajya Sabha) in which Parliament shall be in session.
- **National Commission to Review the Working of the Constitution (NCRWC)** has also recommended the minimum number of working days to be 120 and 100 respectively for Lok sabha and Rajya Sabha.
- **Performance related pay:** There is also a call for linking salaries of legislators to their performance and attendance in Rajya Sabha.

- **Stricter Rules of Procedure and conduct of business** to deal with the unruly behavior - shouting, sloganeering of certain members so that time of the Rajya Sabha is not lost.

Parliamentary Privileges

Parliamentary privileges encompass **special rights, immunities, and exemptions** granted to the two Houses of Parliament, their committees, and their members. These privileges are essential to ensure the independence and effectiveness of their actions.

- **Devoid of these privileges**, the Houses would struggle to maintain their authority, dignity, and honor, and their members would be vulnerable to obstructions in fulfilling their Parliamentary responsibilities.
- Notably, the Constitution extends these privileges to individuals entitled to speak and participate in the proceedings of a House or its committees, including the **Attorney General of India and Union ministers**.
- It is important to clarify that these privileges **do not apply to the President,** who, despite being an integral part of Parliament, is not covered by Parliamentary privileges.

Significance of Parliamentary Privileges:

- The importance of Parliamentary privileges lies in safeguarding the freedom of speech and expression for Members of Parliament, preserving the authority and dignity of the Parliament, and shielding its proceedings from external interference, including the courts of law.
- These privileges serve the purpose of facilitating the effective exercise of constitutional functions by Parliamentarians and regulating the behavior of members.

Parliamentary Privileges in India:

- Article 105 outlines the privileges extended to members, committees, and Houses of Parliament. These privileges encompass:
  - The right to freedom of speech within Parliament for members and individuals authorized to speak or participate in House or committee proceedings.
  - Immunity for members from legal proceedings in any court concerning statements made or votes cast during parliamentary or committee sessions.
  - Immunity for individuals from legal proceedings related to the publication, under the authority of either House of Parliament, of reports, papers, votes, or proceedings.
  - Until further definition by parliamentary law, the privileges enjoyed by the House of Commons before the Constitution's commencement apply to the Houses of Parliament, members, and committees.
  - In addition to these constitutional provisions, parliamentary privileges also emanate from:
  - Legislation enacted by Parliament,
  - Rules established by both Houses,
  - Parliamentary conventions, and
  - Judicial interpretations.

Parliamentary privileges can be categorized into two groups:

(a) Collective privileges of the Houses

(b) Individual privileges of members.

Collective privileges of the Houses

The collective privileges of each House of Parliament encompass:

- The Parliament's entitlement to publish reports, debates, and proceedings.
- The authority to exclude strangers from its proceedings and to hold secret sittings.
- The right to receive information regarding the arrest, detention, conviction, or release of its members.
- The capacity to establish rules governing the conduct of its proceedings and to adjudicate on such matters.
- The ability to impose sanctions on both members and non-members for violating these privileges by reprimand, admonition or imprisonment (suspension or expulsion in case of members).
- No legal proceedings can be initiated against any person within the House premises without the presiding officer's permission.
- Courts are prohibited from investigating the proceedings of the House or its committees.
- It can conduct inquiries and order the attendance of witnesses and send for relevant papers and records.

Individual Privileges of Members

- **Members enjoy specific privileges individually, including:**
  - **Protection from Arrest:** Members are protected from arrest during the session and 40 days before and after Parliament's session. It's important to note that this protection is applicable only in civil cases and does not extend to criminal or preventive detention cases.
  - **Freedom of Speech and Expression:** Members have the freedom of speech and expression within the Parliament. While the freedom of speech and expression for other citizens under Article 19(1)(a) is subject to certain restrictions (as per

Article 19 (2), members face no such limitations for their expressions within the Parliament. However, this freedom is subject to the rules of procedure of the Houses **(Article 118)**.

- **Freedom as Witness:** Members cannot be summoned to give evidence as a witness during Parliament's session without the leave of the House.

It's noteworthy that Parliament has the authority to impose penalties on both its members and outsiders for violating these privileges.

Breach of Privileges and Contempt of House

- Breach of privileges occurs when the rights, privileges or immunities, of either the Members individually or of the House in its collectively, are disregarded or attacked.
- Whereas any act which obstructs the functioning, threatens the dignity or disregards the authority of the House, its members or its officers is treated as a contempt of the House. Few examples of breach of privileges and contempt of the House are:
  - Threat of violence against a member of the House.
  - Publication of a false report of the proceedings of the House.
  - Speeches or publications that reflect on the House, its members or its Committees.
  - A Breach of privilege may amount to contempt of the House. Similarly, a contempt of the House may include a breach of privilege but there could be a Contempt of the House without breaching a privilege. One such example is when a person disobeys a legitimate order of the House; it is a contempt of the House but no breach of privilege is committed).

Issues Regarding Parliamentary Privileges

- The Constitution stipulated that until Parliament enacts a law to **formalize these privileges,** the Houses and their members would continue to enjoy the privileges held by the House of Commons before the Constitution came into effect.
- In 1978, **the 44th Amendment** brought about a superficial change **in Article 105,** removing the reference to the House of Commons from the Indian Constitution. However, the essential stance on privileges remained unchanged.
- **To date, Parliament has not** passed any legislation to **codify these privileges,** leading to numerous instances where conflicts have arisen between the fundamental rights of individuals to express their views on Parliamentary proceedings and the privileges of the Houses. Instances have occurred where Houses of Parliament or State legislatures have ordered the arrest of individuals for breaching privileges.
- In the **Keshav Singh case**, the Supreme Court responding to a Presidential reference under **Article 143,** asserted that in situations where there is a **conflict between privileges and provisions** related to fundamental rights, efforts should be made to reconcile the conflict through **harmonious construction.**
- **Despite recommendations from the Lok Sabha Committee of Privileges in 2008 against codification, citing no need for such an action,** the lack of political will to formalize privileges has led to unnecessary conflicts between citizens' fundamental rights and legislative privileges. This issue could be effectively addressed by enacting legislation to codify Parliamentary privileges.

Sovereignty of Parliament

The **concept of the 'sovereignty of Parliament'** is closely associated with the **British Parliament**, where **sovereignty refers to the supreme power within the state**. In **Great Britain, the Parliament holds this supreme power,** characterized by the absence of 'legal' restrictions on its authority and jurisdiction. This Parliamentary supremacy is a fundamental aspect of the British constitutional system, as outlined by AV Dicey, a British jurist.

According to Dicey, this principle has three implications.

- The Parliament in Britain has the authority to make, amend, substitute, or repeal any law.
- **Constitutional laws** can be made by the same procedure as ordinary laws, with no legal distinction between the constituent and legislative authority.
- The **judiciary cannot declare** Parliamentary laws **invalid** as unconstitutional, reflecting the absence of a judicial review system in Britain.

On the contrary, the Indian Parliament does not enjoy similar sovereignty due to 'legal' restrictions on its authority and jurisdiction.

- Factors limiting the sovereignty of the Indian Parliament include the written nature of the Constitution, the federal system of government, the system of judicial review, and the presence of fundamental rights.
- While the organizational structure of the Indian Parliament resembles that of the British Parliament, there is a substantial difference. The **Indian Parliament lacks sovereignty** in the sense of **unrestricted authority,** in contrast to the British Parliament.
- Similarities in this regard exist with the American Legislature, where Congress's sovereignty is legally constrained by a written constitution, federalism, judicial review, and a Bill of Rights.

Decline of Parliament Productivity in Recent Years

The **17th Lok Sabha**, in its penultimate year, has operated for 230 sitting days. Among Lok Sabhas completing a full five-year term, the **16th Lok Sabha recorded the fewest sitting days (331)**. With an average of 58 sitting days per year and one year left, it's improbable for the 17th Lok Sabha to exceed the 331-day mark. If this occurs, **it would be the shortest full-term Lok Sabha since 1952.**

- As per **PRS Legislative Research data**, there has been a decrease in the number of bills passed by the Lok Sabha over the years.
- In the 16th Lok Sabha (2014-2019), a total of 205 bills were passed, compared to 248 bills in the preceding Lok Sabha (2009-2014). The current 17th Lok Sabha (2019-present) has passed only 17 bills thus far.
- Analysis by **IndiaSpend** reveals that the **16th Lok Sabha lost 29%** of its scheduled time due to disruptions, while the **17th Lok Sabha has lost 48% of its scheduled time to date.**
- **Private Members' Bills**, introduced by non-government MPs, are considered a way for backbenchers to contribute to legislation. However, data from **PRS Legislative Research** indicates a **decline** in the introduction and passage of Private Members' Bills.

The **diminishing productivity of the Indian Parliament can be attributed to various factors**:

- **Political Polarization and Confrontational Politics:**
  - Frequent disruptions in the House.
  - Protests, sloganeering, and walkouts by MPs.
  - Impedes smooth Parliamentary functioning.
- **Lack of Adequate Preparation and Deliberation:**
  - Rushed passage of bills without thorough discussions.
  - Results in inadequate scrutiny and oversight.
  - Leads to poorly drafted legislation causing delays and controversies.
- **Strong Anti-defection measures:**
  - MPs have to always tow party-line.
  - MPs turn into mouth-piece of respective parties, instead of being voice of the people.

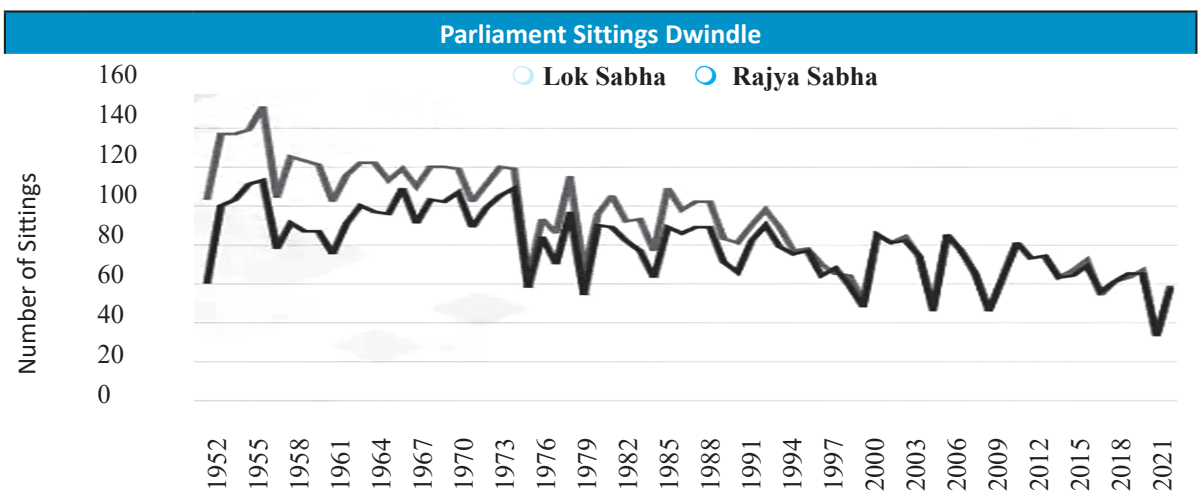


Fig. 18.16: Decline of Parliament Productivity in Recent Years

- **Weak Committee System:**
  - Ineffective scrutiny of bills due to a weak committee system.
  - Committees play a crucial role in research and stakeholder consultations.
  - Bypassing committees hampers the legislative process.
- **Absence of Diversity in Parliament:**
  - Significant underrepresentation of marginalized groups.
  - Lack of diverse voices and perspectives.
  - Legislation may not reflect the needs of all sections of society.

Ways to Enhance Parliamentary Productivity in India:

- **Promote Constructive and Consensus-based Politics:**
  - Encourage collaboration among members from different parties.
  - Reduce disruptions in the House for more efficient functioning.
- **Improve Preparation and Scrutiny of Bills:**
  - Establish a robust committee system for in-depth research.
  - Facilitate consultations with stakeholders for well-drafted bills.
  - Ensure thorough scrutiny and adequate debate in Parliament.

- **Enhance Diversity and Representation:**
  - Increase representation of marginalized groups (women, Dalits, religious minorities).
  - Ensure diverse voices are heard, reflecting societal needs in legislation.
- **Leverage Technology for Efficiency:**
  - Implement electronic voting systems for streamlined processes.
  - Enable remote attendance for members to reduce disruptions.
  - Enhance digital communication channels for efficient operations.
- **Focus on Capacity-building and Training:**
  - Provide training for MPs in legislative drafting and public speaking.
  - Enhance skills for effective committee work.
  - Empower Parliamentarians to contribute to better legislative outcomes.

In conclusion, elevating Parliamentary productivity in India requires a comprehensive approach, encompassing consensus-based politics, improved bill preparation, increased diversity, technological advancements, and capacity-building for Parliamentarians. These measures aim to strengthen democratic institutions, ensuring effective governance for all citizens.

Parliamentarians: A Socio-Economic Perspective

First Phase (1947-1967)

- Parliament was composed mainly of Brahmins and OBCs, with a few women representatives, including Amrit Kaur, the first female union Minister of Health.
- Educational background was dominated by foreign university graduates, with many lawyers and agriculturists among parliamentarians.

Second Phase (1967-1989)

- The Democratic Upsurge era saw a consolidation of OBC representation in parliament.
- Common professions among parliamentarians included agriculturists and social workers.

Third Phase (1989-Present)

- This phase, marked by **"plebeianisation,"** witnessed a surge in **OBC dominance and the entry of business personalities into politics.**
- **Criminalization of politics increased** significantly during this period.
- Representation of women and minority sections remained largely unchanged.

Criminalization of Politics: An Ongoing Issue

- The **Association for Democratic Reforms (ADR)** reports that **24%** of Rajya Sabha members and 43% of Lok Shabha MPs face criminal cases.
- Contributing factors include lack of political will, enforcement issues, and legal loopholes.

Measures for Reform: Suggested Actions

- Recommendations for addressing criminalization include:
  - Ensuring transparency
  - Promoting citizen awareness
  - Providing statutory status to the Model Code of Conduct
  - Empowering the Election Commission of India
  - De-recognizing parties supporting criminals
  - Establishing Fast Track Courts
  - Breaking the criminal-politician nexus
  - Demonstrating strong political will

Low Participation of Women in Politics

Low Participation statistics:

- Women hold only 15% of seats in the Lok Sabha and an average of 9% in state legislatures.
- India ranks 153rd globally in women's representation in national parliaments.
- Only Bihar and Rajasthan have a 14% representation, exceeding the average.

Obstacles to Participation:

- Deeply ingrained patriarchal attitudes.
- Pervasive influence of identity politics.
- Women face political apathy and subtle discrimination.
- Lack of access to resources and training opportunities.
- Difficulty balancing work and family responsibilities.

Importance of Women's Participation:

- Achieving equity, inclusiveness, and effective governance.
- Women bring diverse perspectives and sensitivity to gender issues.
- Leads to more gender-sensitive policies, improved governance, and enhanced responsiveness to all citizens.

Measures for Improvement

- To address the low participation of women in politics, various measures can be implemented. The **Zipper System,** adopted by the **Rwandan Patriotic Front,** reserves every third seat for women candidates, ensuring a more equitable representation.
- **Promoting women to leadership positions within political parties** can help challenge stereotypes and

encourage others to follow suit. Additionally, **fostering inner-party democracy** and **elevating women from local bodies** to higher governance levels can create a pipeline of experienced female leaders.

- The **positive impact of reservations on local governance has been well-documented**. Increased representation of women has led to greater empowerment, enhanced leadership opportunities, and a shift in decision-making to focus more on women's issues.
- A **2012 report by UN Women** showcased success stories highlighting the positive outcomes of women's leadership and participation in local governance.
- However, various, **challenges persist**. The **use of proxy candidates,** often referred to as "Panchayat Pati" or "Sarpanch Pati," where men act as de facto representatives of women elected to local bodies, undermines women's autonomy and decision-making power.
- Moreover, the lack of resources, training, and entrenched gender stereotypes continue to hinder women's advancement in the political realm.

Overcoming these challenges requires a **concerted effort from political parties, civil society organizations, and the government** to create an enabling environment for **women's participation in politics**. By addressing the root causes of gender inequality and promoting women's leadership, India can move towards a more representative and equitable political system.

Reservation of Women in Parliament

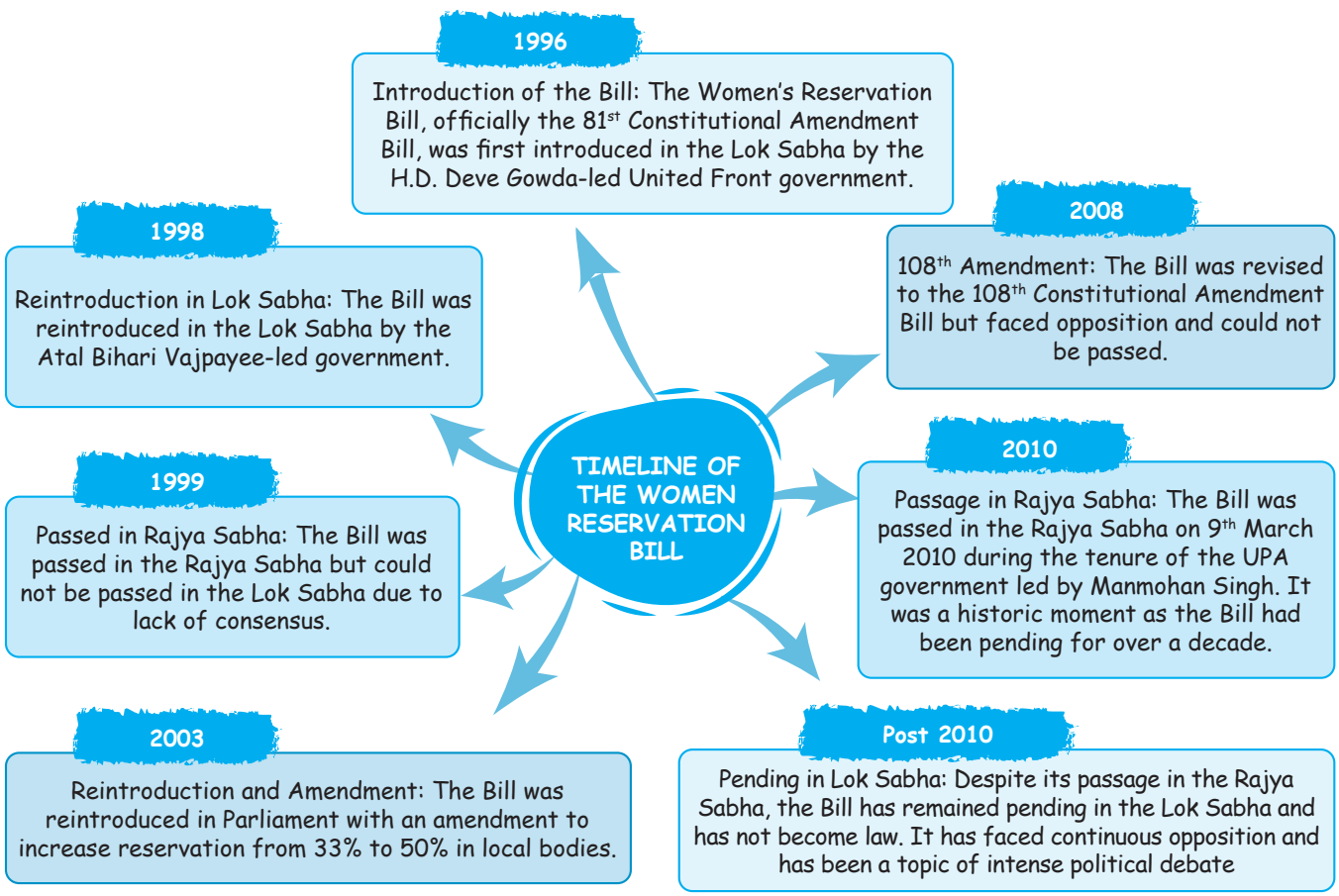

TIMELINE OF THE WOMEN RESERVATION BILL
1996
Introduction of the Bill: The Women's Reservation Bill, officially the 81st Constitutional Amendment Bill, was first introduced in the Lok Sabha by the H.D. Deve Gowda-led United Front government.
1998
Reintroduction in Lok Sabha: The Bill was reintroduced in the Lok Sabha by the Atal Bihari Vajpayee-led government.
1999
Passed in Rajya Sabha: The Bill was passed in the Rajya Sabha but could not be passed in the Lok Sabha due to lack of consensus.
2003
Reintroduction and Amendment: The Bill was reintroduced in Parliament with an amendment to increase reservation from 33% to 50% in local bodies.
2008
108th Amendment: The Bill was revised to the 108th Constitutional Amendment Bill but faced opposition and could not be passed.
2010
Passage in Rajya Sabha: The Bill was passed in the Rajya Sabha on 9th March 2010 during the tenure of the UPA government led by Manmohan Singh. It was a historic moment as the Bill had been pending for over a decade.
Post 2010
Pending in Lok Sabha: Despite its passage in the Rajya Sabha, the Bill has remained pending in the Lok Sabha and has not become law. It has faced continuous opposition and has been a topic of intense political debate

Fig. 18.17: Reservation of Women in Parliament

Constitution (106th Amendment) Act, 2023: Reserving Seats for Women in Parliament and State Assemblies

The **Constitution (106th Amendment) Act, 2023,** was passed by the Parliament of India to ensure **one-third reservation for women in the Lok Sabha** (Lower House of the Parliament), **State Assemblies, and the Legislative Assembly of the National Capital Territory of Delhi**. It shall come into effect after first exercise of delimitation is under taken after this amendment act.

Key Provisions:

- **Articles Amended: Article 239AA** of the Constitution was amended to reserve one-third of seats for women in the Legislative Assembly of the National Capital Territory of Delhi.

- **Articles Inserted:** Three new articles were inserted into the Constitution:
  - **Article 330A:** The article reserves one-third of seats for women in the Lok Sabha, including seats reserved for Scheduled Castes (SCs) and Scheduled Tribes (STs).
  - **Article 332A:** The article reserves one-third of seats for women in the State Assemblies, including seats reserved for SCs and STs.
  - **Article 334A:** It specifies that the Act shall come into effect after the next delimitation of constituencies, has a **15-year sunset clause,** and allows for extension and periodic rotation of seats by law.

Need for Women's Reservation

- **Under-representation:** Women currently hold about 14% of seats in the Indian Parliament and an average of 8% in State Assemblies.
- **International Comparison:** India lags behind neighbouring countries in terms of women's representation in the Lower House of the Parliament.
- **Political Inequality:** The low representation of women in politics contributes to India's poor ranking in the **Global Gender Gap report** (126 out of 146 countries in 2023).
- **Patriarchal Politics:** Affirmative action is necessary due to the patriarchal nature of political parties and the barriers faced by women in entering politics.
- **Gender-sensitive Policy:** Women's representation is essential for addressing societal issues such as crime against women and low labour force participation.
- **Local Level Evidence:** Reservations at local levels have led to improved crime reporting and access to amenities.

Concerns with the Act

- **Principle of Equality:** Reservations may be seen as violative of the principle of merit-based competition and equality.
- **Voter Choice:** Legislative seat reservations may restrict voter self-determination.
- **Homogeneity:** Women do not form a homogeneous group like castes, and different arguments may apply.
- **Political Empowerment:** Broader electoral reforms are needed for the true political empowerment of women or the phenomenon, like Sarpanch Pati in Panchayats would emerge in these legislative bodies also.
- **State Disparities:** Variations in the application of reservations across states and the rotation of seats.
- **Upper Houses:** No provisions for reservations in the Rajya Sabha (upper house of Parliament) or State Legislative Councils.

IGNITE YOUR MIND

While women like Rajkumari Amrit Kaur played significant roles in shaping India's early political landscape, their representation continues to be disproportionately low. How can we encourage and empower women to participate more actively in politics and overcome the existing barriers to their equal representation?

Suggestions

- **Implementation:** Census data and delimitation should be conducted promptly for timely implementation of the Act.
- **Capacity Building:** Training and mentorship programs for women leaders should be enhanced to improve their mobilization and effectiveness.

Comparative Analysis of Indian Parliament

Features	Indian Parliament	British Parliament	American Legislature
Main Components	President, Rajya Sabha, Lok Sabha	Crown, House of Lords, House of Commons	U.S. President, Senate, House of Representatives
Executive's Role in Legislation	President-in-Parliament	Crown-in-Parliament	U.S. President is separate
Relationship between Executive and Legislature	Interwoven to reduce the friction between two out of the three pillars of Indian democracy.	Interwoven	Distinct separation
Upper House	Rajya Sabha	House of Lords	Senate
Lower House	Lok Sabha	House of Commons	House of Representatives

CONCLUSION

Parliament is the 'temple of democracy' and its effective functioning is synonymous with a vibrant democracy. Comprehensive reforms are needed to ensure that parliament functions as a productive space for policies and is not used for politics.

Article	Description
79	❑ Constitution of Parliament, which consists of the President and two Houses (Lok Sabha and Rajya Sabha)
80	❑ Composition of Rajya Sabha, which consists of 12 members nominated by the President and 238 representatives of the States and Union Territories
81	❑ Composition of Lok Sabha, which consists of 530 members elected by direct election from territorial constituencies in the States and 20 members to represent the Union Territories
82	❑ Readjustment of seats in Lok Sabha after each census
83	❑ Duration of Houses of Parliament, which is five years for Lok Sabha and six years for Rajya Sabha
84	❑ Qualification for membership of Parliament, which requires citizenship of India and minimum age of 25 years for Lok Sabha and 30 years for Rajya Sabha
85	❑ Sessions of Parliament, prorogation and dissolution, which are determined by the President
86	❑ Right of President to address and send messages to Houses
87	❑ Special address by the President at the commencement of the first session after each general election and the first session of each year
88	❑ Rights of Ministers and Attorney-General as respects Houses, which include the right to speak and take part in the proceedings of either House or any committee thereof
105	❑ Powers, privileges and immunities of the Houses of Parliament and of the members and committees thereof, which include freedom of speech, immunity from legal proceedings and power to punish for contempt

Parliamentary Committees and Indian Parliamentary Groups

19

INTRODUCTION

- The Parliament has limited time and expertise to make a detailed scrutiny of all legislative measures and other matters, therefore, it is assisted by a number of committees in discharge of its duties, namely Parliamentary Committees. These committees, appointed, elected, or nominated by the House, operate under the direction of the Speaker/Chairman, and their reports are presented to the House or the Speaker/Chairman and the Secretariat, provided by the Lok Sabha/Rajya Sabha Secretariat.
- The concept of Parliamentary committees originated in the British Parliament and in India it can be traced back to Montford Reforms. In the Indian Constitution these committees draws their authority from:
  - **Article 105:** Powers, privileges, etc., of the houses of Parliament and of the members and committees thereof.
  - **Article 118:** Each House of Parliament may make rules for regulations, subject to the provisions of this constitution, its procedure and the conduct of its business.
- There are two types of Parliamentary Committees: **Standing Committees** and **Ad hoc Committees**.
- Standing Committees are permanent and regularly constituted, while Ad hoc Committees are appointed for specific purposes and dissolved once their task is completed.
- Ministers generally are not allowed to be a member in most of the committees such as in Financial Committees, Departmentally Related Standing Committees, Committee on Subordinate legislation, Committee on Welfare, etc.

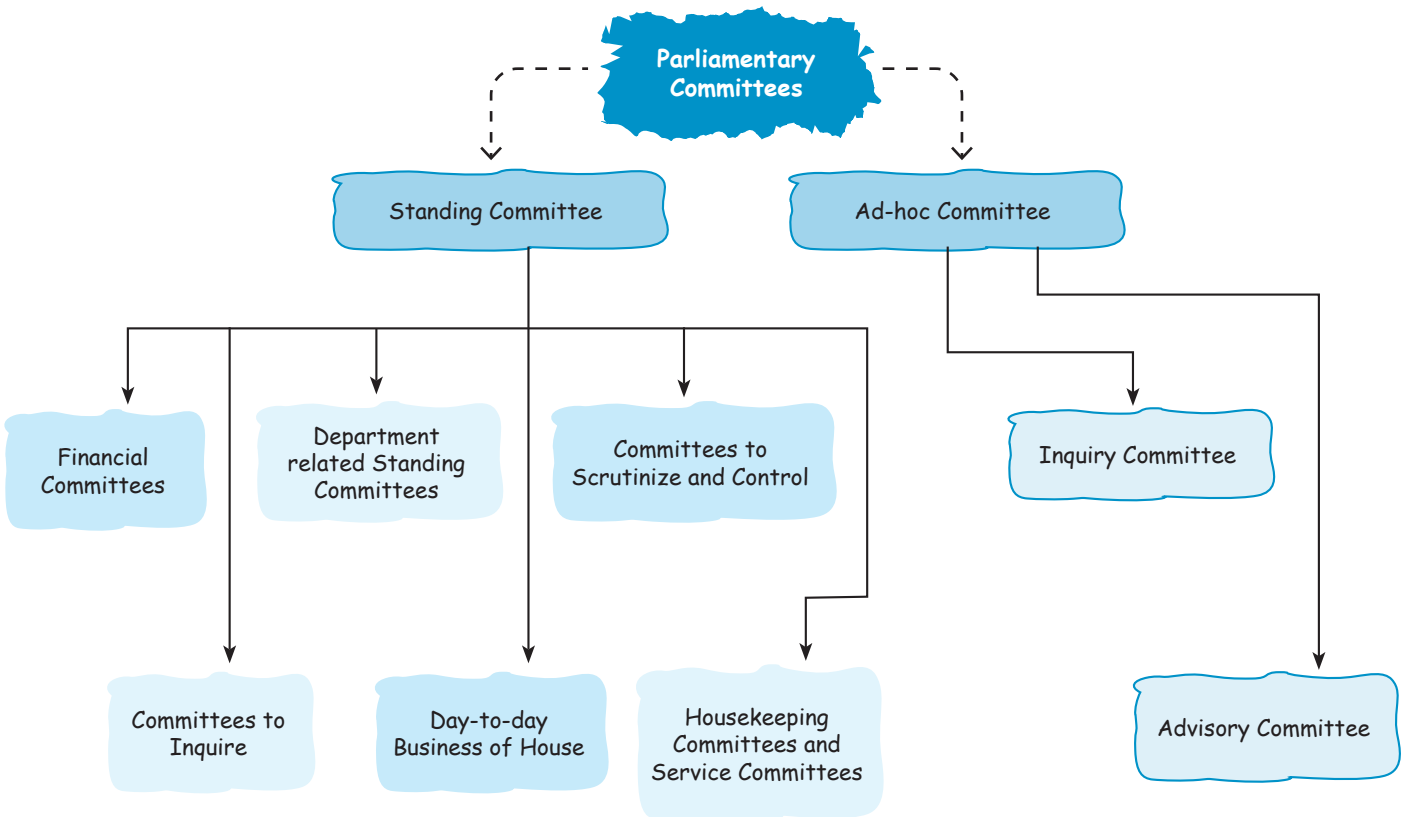


Fig. 19.1: Parliamentary Committees

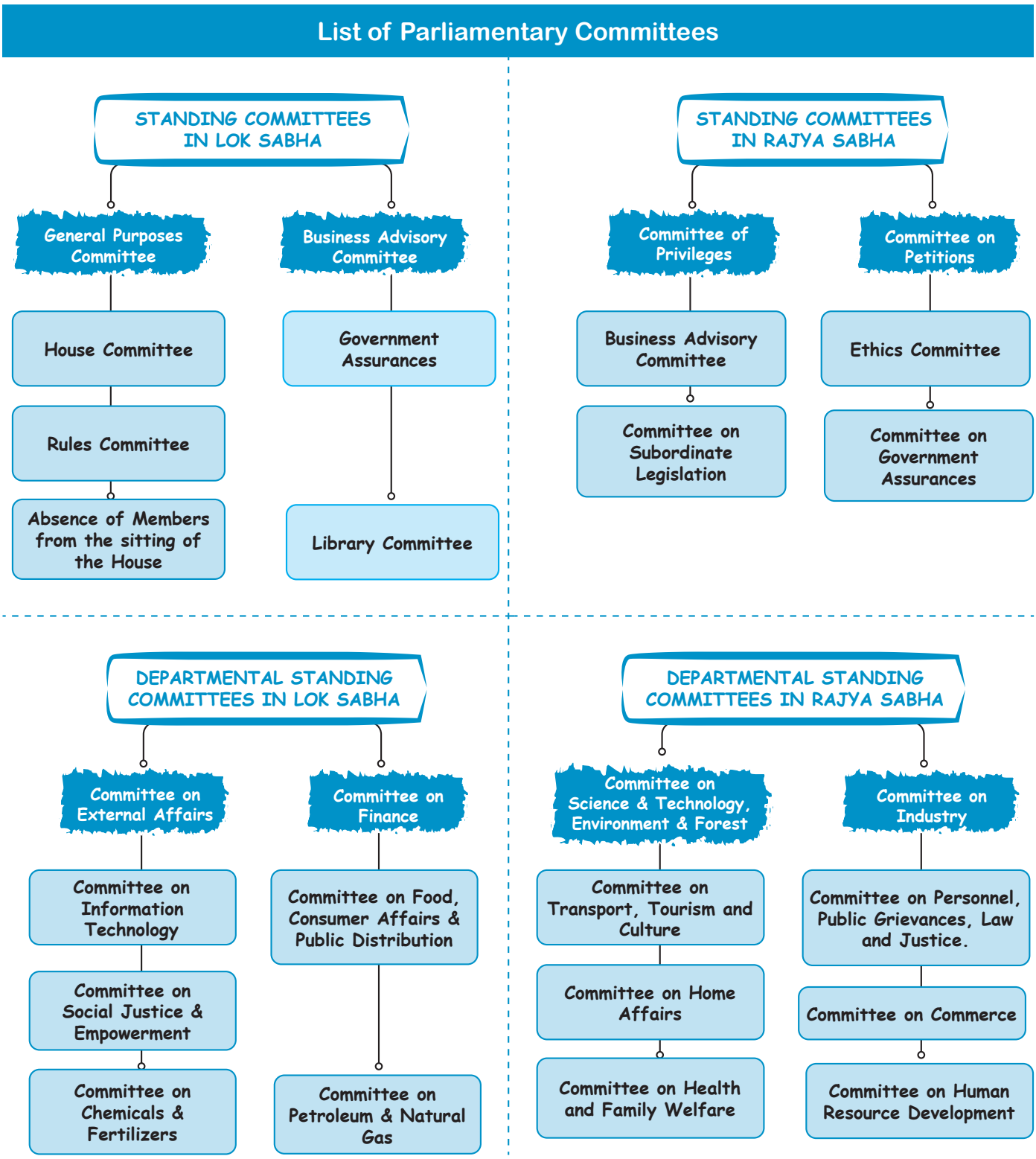

List of Parliamentary Committees
STANDING COMMITTEES IN LOK SABHA
General Purposes Committee
Business Advisory Committee
House Committee
Rules Committee
Absence of Members from the sitting of the House
Government Assurances
Library Committee
STANDING COMMITTEES IN RAJYA SABHA
Committee of Privileges
Committee on Petitions
Business Advisory Committee
Committee on Subordinate Legislation
Ethics Committee
Committee on Government Assurances
DEPARTMENTAL STANDING COMMITTEES IN LOK SABHA
Committee on External Affairs
Committee on Finance
Committee on Information Technology
Committee on Social Justice & Empowerment
Committee on Chemicals & Fertilizers
Committee on Food, Consumer Affairs & Public Distribution
Committee on Petroleum & Natural Gas
DEPARTMENTAL STANDING COMMITTEES IN RAJYA SABHA
Committee on Science & Technology, Environment & Forest
Committee on Industry
Committee on Transport, Tourism and Culture
Committee on Home Affairs
Committee on Health and Family Welfare
Committee on Personnel, Public Grievances, Law and Justice.
Committee on Commerce
Committee on Human Resource Development

Fig. 19.2: List of Parliamentary Committees

Ad-Hoc Committees

Occasionally, temporary Ad hoc Committees are established to investigate specific matters. These committees are not explicitly named in the Rules of Procedure, and they are disbanded once they have completed their assigned task and submitted their report.

Ad hoc Committees can be categorized into two types:

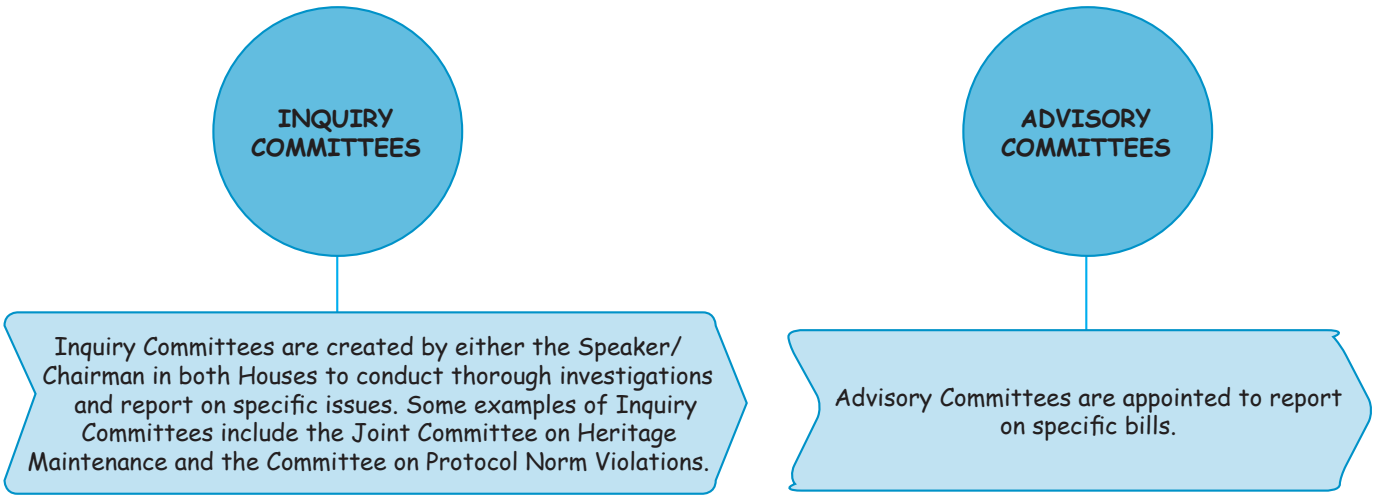

INQUIRY COMMITTEES
Inquiry Committees are created by either the Speaker/ Chairman in both Houses to conduct thorough investigations and report on specific issues. Some examples of Inquiry Committees include the Joint Committee on Heritage Maintenance and the Committee on Protocol Norm Violations.
ADVISORY COMMITTEES
Advisory Committees are appointed to report on specific bills.

Fig. 19.3: Ad hoc Committees

Standing Committees

On the basis of nature of functions performed by them, standing committees can be classified into six categories. These include financial committees, departmental-related standing committees, committees to inquire, committees to scrutinize and control, house keeping or service committees and Committees related to Day to Day Business of the House. Generally the Minister is not part of these committees. They are mentioned below:

Name of Committee	Strength	House	Membership	Chairman
Financial Committees				
Estimates Committee	30	Lok Sabha	Members of Lok Sabha elect through the proportional representation method by the Single Transferable Vote system every year.	The Chairman is appointed by the Speaker from among the members of Lok Sabha only.
Public Accounts Committee	22 (15 LS +7 RS)	Both Lok Sabha and Rajya Sabha	Members elected through the proportional representation method by the Single Transferable Vote system by each house every year.	The Chairman is appointed by the Speaker of Lok Sabha. Since 1967, the chairman of the committee is selected from the opposition.
Committee on PSU	22 (15 LS +7 RS)	Both Lok Sabha and Rajya Sabha	Members are elected through the proportional representation method by the Single Transferable Vote system by each house every year.	The Chairman is appointed by the Speaker from among the members of Lok Sabha only.
Departmental Standing Committees				
Departmental Standing Committees (24)	31 (21 LS +10 RS)	Both Lok Sabha and Rajya Sabha	Members of Lok Sabha are Nominated by the Speaker whereas members of Rajya Sabha are nominated by the Chairman.	–

Day-to-day Business of House				
Business advisory committee	15 LS 11 RS	Separate for both houses	The members are nominated by the Speaker or the Chairman.	The Chairman or the Speaker is an ex-officio Chairman.
Private members committee	15	Lok Sabha only.	The members are nominated by the Speaker.	The Deputy Speaker is the chairperson.
Committee on the absence of a member	15	Lok Sabha only.	The members are nominated by the Speaker.	–
Rules Committee	15 LS 16 RS	Separate for both houses.	The members are nominated by the Speaker or the Chairman.	The Speaker or the Chairman is the ex-officio Chairman.
Committees to Scrutinize and Control				
Committee on Government Assurance	15 LS 10 RS	Separate for both houses.	The members are nominated by the Speaker or the Chairman.	–
Committee on paper laid on the table	15 LS 10 RS	Separate for both houses	The members are nominated by the Speaker or the Chairman.	–
Committee on subordinate legislation	15 LS 15 RS	Separate for both houses.	The members are nominated by the Speaker or the Chairman.	–
Committee on Welfare of SC and ST	30 (20 LS +10 RS)	Both Lok Sabha and Rajya Sabha	The members are nominated by the Speaker or the Chairman.	–
Committee on empowerment of women	30 (20 LS +10 RS)	Both Lok Sabha and Rajya Sabha	The members are nominated by the Speaker or the Chairman.	The Chairperson of the Committee is appointed by the Speaker from amongst its Members.
A joint committee on offices of profit	15 (10 LS +5 RS)	Both Lok Sabha and Rajya Sabha	–	–
Committees to inquire				
Committee on petitions	15 LS 10 RS	Separate for both houses	The members are nominated by the Speaker or the Chairman.	–
Committee of Privileges	15 LS 10 RS	Separate for both houses	The members are nominated by the Speaker or the Chairman.	–
Ethics committee	No fixed strength (currently 15 in LS and 13 in RS)	Separate for both houses.	The members are nominated by the Speaker or the Chairman.	–
House-keeping Committees and Service Committees				
Library committee	9 (6 LS +3 RS)	Both Lok Sabha and Rajya Sabha	–	The Chairperson of the Committee is appointed by the Speaker from amongst members of the Committee; provided that the Deputy Speaker, in case is a member of the Committee, shall be appointed as Chairman of the Committee.

General purpose committee	Not fixed	Separate for both houses	The General Purposes Committee consists of the Chairman or Speaker, the Deputy Chairman or Deputy Speaker, members of the panel of Vice-Chairmen, Chairmen of all parliamentary standing committees of Rajya Sabha or Lok Sabha, leaders of recognised parties and groups in Rajya Sabha or Lok Sabha and such other members as may be nominated by the Chairman or Speaker.	Speaker and Chairman are the ex-officio Chairman.
The joint committee on salaries and allowances of members	15 (10 LS +5 RS)	Both Lok Sabha and Rajya Sabha	–	–

Functions of Parliamentary Committees

The three financial committees are specifically significant in ensuring executive accountability as:

Public Accounts Committee (PAC)

This committee was set up on recommendations of the **Montague-Chelmsford Report**. It was first set up in **1921,** making it one of the oldest parliamentary committees in India.

❑ **Functions:**

- It examines the appropriation accounts and reports of the CAG related to the expenditures incurred by the government.
- It ensures that the funds granted by Parliament are used for the purposes for which they were allocated.
- The committee scrutinizes the audit reports prepared by the CAG, highlighting instances of financial irregularities, waste, or inefficiency in government spending.
- It plays a crucial role in holding the government accountable for its financial decisions and actions.
- It aims to ensure that public money is spent efficiently, economically, and in accordance with the principles of fiscal prudence.
- PAC submits its reports to Parliament, containing its findings, recommendations, and observations.
- The government is required to respond to these reports, and Parliament may consider the committee's recommendations for policy improvements.

Estimates Committee:

It was set up on recommendations of the **John Mathai Committee,** in 1947 after independence.

❑ **Functions:**

- The committee thoroughly examines the budget estimates presented by the government, focusing on the justification of expenditures proposed in various departments.
- It assesses whether the money is well laid out within the limits of the policy implied in the estimates.
- The committee looks into the economy, efficiency, and effectiveness of government spending.
- The Estimates Committee presents its reports to the Lok Sabha, highlighting its findings and observations on the budget estimates.
- These reports are instrumental in providing valuable insights into the allocation and utilization of funds.
- The committee makes recommendations for improving the policies and administration in the areas examined.

Committee on Public Undertakings

It was created in 1964 on the recommendation of the **Krishna Menon Committee**.

❑ **Functions:**

- The committee examines the reports and accounts of public undertakings to ensure financial prudence and effective utilization of resources.
- It holds public undertakings accountable for their performance and adherence to prescribed norms and guidelines.
- The committee evaluates the efficiency and economy in the administration of public undertakings, recommending measures for improvement.
- It conducts a performance audit of selected public undertakings to assess their achievements against predetermined objectives.
- Based on its examinations, the committee makes recommendations for enhancing the functioning, profitability, and overall efficiency of public undertakings.

- **There are certain hurdles in their effective functioning, such as:**
  - The committees usually perform a **post-mortem examination** of the accounts. By the time committees make their scrutiny, the executive has already made the expenditure.
  - **Reports** of the committees are **often not tabled before the parliament** or are tabled with **considerable delays**, reducing their efficacy.
  - Its **recommendations are largely only advisory in nature**. This is a serious limitation on the ability of the committees to hold the executive accountable.
  - Parliament, dominated by the executive, has the authority to take action on the reports of the committees, creating a conflict of interest.
  - Also, the **committees lack the technical expertise and manpower** to critically scrutinize the public expenditure made by the executive.
- **To improve the efficacy of these committees we need to take comprehensive steps like:**
  - The committees should be provided with **adequate secretarial staff.** Also, **expert guidance** on technical matters must be made available.
  - The **reports** of the committees should be **mandatorily tabled before the parliament** on a timely basis.
  - Their duration may be extended beyond a year to enable more prolific scrutiny of public expenditure.
  - The schedule of the committees must be fixed, to ensure devoted time on matters of public importance.

IGNITE YOUR MIND

Former US President Woodrow Wilson famously said, 'It is not far from the truth that Congress in session is Congress on public exhibition, whilst Congress in committee rooms is Congress at work. Do you think this statement is valid in the case of India as well? If yes, can you think of a few examples of some of the landmark achievements of Parliamentary Committees in India?

Departmental Standing Committees

Day-to-Day Business of House:

- There are 24 Departmentally Related Standing Committees covering under their jurisdiction all the Ministries/ Departments of the Government of India.
- Each of these Committees consists of 31 Members, 21 from Lok Sabha and 10 from Rajya Sabha to be nominated by the Speaker, Lok Sabha and the Chairman, Rajya Sabha, respectively.
- The term of Office of these Committees does not exceed one year.
  - The Business Advisory Committee controls the House's schedule.
  - Private Members Committee allots time for debate on private member bills and resolutions.
  - The Rules Committee recommends modifications to the House's rules if necessary.
  - Requests for leave made by members of the houses are reviewed by the Committee on Members' Absences.

Some key functions of the 24 Departmental Standing Committees are as follows:

- They review and analyze the demand for grants of the relevant ministries, but they cannot propose any cut-motion.
- They examine the bills presented by the concerned ministries.
- They scrutinize the annual reports of the ministries.
- They consider policy documents presented by the ministries before both houses of Parliament.
- It is important to note that these committees do not typically involve themselves in day-to-day administration or interfere with matters taken up by other departmental standing committees.
- Their recommendations are advisory in nature and are not binding on Parliament.

Committee to Scrutinize and Control

- **Committee on Government Assurances:** This committee evaluates the extent to which promises, guarantees and undertakings made by ministers in the Lok Sabha were fulfilled. It has 15 MPs in the Lok Sabha and 10 in the Rajya Sabha.
- **Committee on subordinate legislation:** This committee reviews whether the executive branch properly utilizes its powers to create regulations, rules, sub-rules, and bylaws conferred by Parliament or the Constitution.
- **Committee for the validity of papers on the table:** This committee assesses the constitutionality and conformity of any paper presented by ministers. It has 15 MPs in the Lok Sabha and 10 in the Rajya Sabha.
- **Committee for the welfare of SCs and STs:** This committee comprises 30 members, with 20 in the Lok Sabha and 10 in the Rajya Sabha. Reports from the National Commission for SCs and the National Commission for STs are presented to this committee.

- **Committee on Women's Empowerment:** The National Commission on Women's Report is reviewed by this committee.
- **Joint Committee on Office of Profit:** This committee examines the composition and character of committees and other bodies appointed by federal, state, and union territory administrations and provides recommendations on whether or not individuals serving on these bodies should be barred from running for Parliament.

Office of Profit [Article 102(1)(a)]:

- An office of profit is a position that carries with it some financial gain or benefit. In India, the concept of an office of profit is enshrined in the Constitution, which prohibits members of Parliament and state legislatures from holding offices of profit under the government of India or the government of any state. This is done to prevent conflicts of interest and to ensure that members of the legislature are not influenced by considerations of personal gain.
- The definition of an office of profit is not expressly defined in the Constitution, but it has been interpreted by the Supreme Court of India to include any position that carries with it the following:
  - Salary, fees, or allowances
  - Remuneration in the form of perquisites or benefits
  - Any pecuniary or pecuniary advantage, direct or indirect

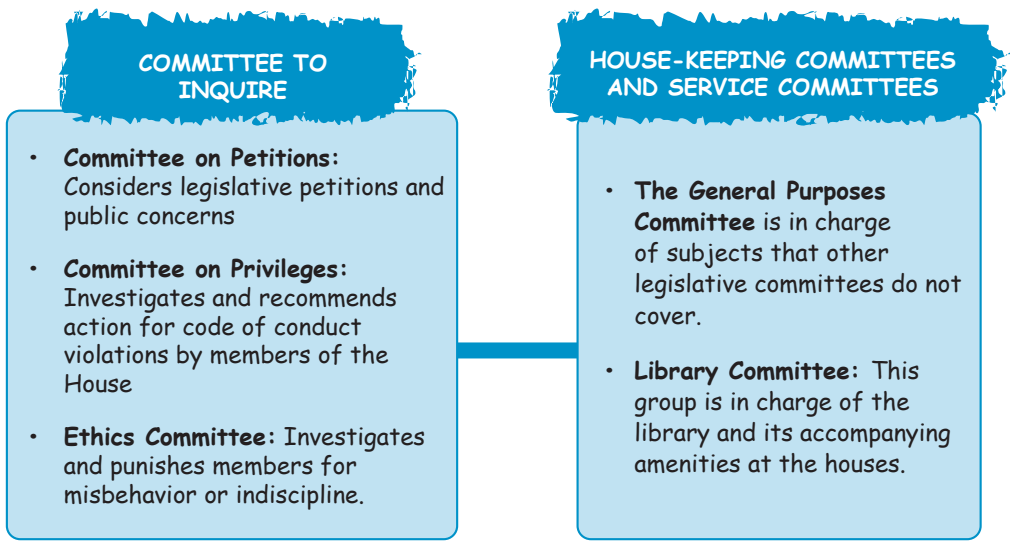

COMMITTEE TO INQUIRE
Committee on Petitions: Considers legislative petitions and public concerns
Committee on Privileges: Investigates and recommends action for code of conduct violations by members of the House
Ethics Committee: Investigates and punishes members for misbehavior or indiscipline.
HOUSE-KEEPING COMMITTEES AND SERVICE COMMITTEES
The General Purposes Committee is in charge of subjects that other legislative committees do not cover.
Library Committee: This group is in charge of the library and its accompanying amenities at the houses.

Fig. 19.5: Committee to Scrutinize and Control

Consultative Committee

- Consultative Committees are established to collaborate with government departments or ministries.
- Members of these committees, including Ministers, hold informal meetings to discuss policies and programs and their implementation processes.
- The Ministry of Parliamentary Affairs appoints these committees.
- The committee can have a minimum of 10 members and a maximum of 30.

Joint Parliamentary Committees

- Joint Parliamentary Committees (JPCs) can be formed for various purposes, including examining specific bills or investigating financial irregularities.
- These committees consist of members from both Houses of Parliament.
- JPCs can seek evidence from experts, governmental entities, associations, individuals, or interested parties.
- Witnesses who fail to appear before a JPC in response to a summons may be held in contempt of the House.
- JPCs are appointed by the House, the Speaker, or the Presiding Officers of both Houses on an ad hoc basis.
- Some examples of JPCs include the Committee on the Welfare of Scheduled Castes and Scheduled Tribes, the Committee on Offices of Profit, and the Committee on Empowerment of Women.
- There are also committees focused on specific issues within Parliament, such as the Library Committee, the Committee on Food Management in Parliament House Complex, and the Committee on Installation of Portraits/ Statues of National Leaders and Parliamentarians in the Parliament House Complex.

- Finally, there is a Committee on Security Matters in the Parliament House Complex.

Self-Regulation of Parliament

- Parliamentary Committees serve as a means to handle a variety of issues that are too voluminous for the parliament to handle on its own.
- Their role extends beyond just law-making and is crucial in the day-to-day functioning of the House.
- The Parliament conducts all of its important tasks through discussions, which must be conducted in an orderly and meaningful manner for the Parliament's functions to be carried out smoothly and with dignity.

Ethics Committee

The concept of an Ethics Committee in the Indian Parliament can be traced back to the 1990s when concerns arose about the conduct of certain Members of Parliament (MPs). In 1996, during the Presiding Officers Conference held in New Delhi, a resolution was adopted urging legislatures to explore the possibility of establishing Ethics Committees. This resolution paved the way for the formation of Ethics Committees in both the Lok Sabha (Lower House) and the Rajya Sabha (Upper House).

Ethics Committee in Rajya Sabha

The Ethics Committee in the Rajya Sabha was the first to be established, on March 4, 1997, by the then Chairman of the Rajya Sabha, K.R. Narayanan. The Committee's mandate was to oversee the moral and ethical conduct of MPs and to examine cases of misconduct referred to it.

Ethics Committee in Lok Sabha

The Lok Sabha took a few years longer to establish its Ethics Committee. An ad-hoc Ethics Committee was constituted in 2000 by the then Speaker, G.M.C. Balayogi, to deal with specific cases of misconduct. However, it was only in 2015 that a permanent Ethics Committee was formed in the Lok Sabha.

- **Role and Functions of Ethics Committees:**

  The Ethics Committees in both Houses play a crucial role in upholding the ethical standards of MPs. They are empowered to investigate allegations of misconduct, including but not limited to:

  - Misuse of parliamentary privileges
  - Financial irregularities
  - Breach of trust
  - Unparliamentary conduct

  The Committees can also issue reprimands, recommend disciplinary action, or even recommend expulsion from Parliament in severe cases.

Significance of Ethics Committees

The Ethics Committees play a vital role in preserving the integrity of the Indian Parliament. They act as a watchdog, ensuring that MPs conduct themselves in a manner that is befitting of their position and upholds the trust reposed in them by the electorate. The Committees' actions have helped to deter misconduct and maintain the public's faith in the institution of Parliament.

Important Cases

- **The cash-for-query scam:** In 2005, the Ethics Committees of both Houses investigated allegations that Members of Parliament had been paid to ask questions in Parliament. Ten Lok Sabha MPs and one Rajya Sabha MP were found guilty of misconduct and were expelled from Parliament.
- **The Tehelka sting operation:** In 2001, the Ethics Committee of the Lok Sabha investigated allegations that Members of Parliament had accepted bribes from journalists. The Committee found that several Members of Parliament had engaged in corrupt activities and recommended that they be expelled from Parliament.
- **The 2G spectrum scam:** In 2012, the Ethics Committee of the Lok Sabha investigated allegations that the then-Minister of Telecommunications had misused his powers to allocate 2G spectrum licenses to favored companies. The Committee found that the Minister had engaged in misconduct and recommended that he be removed from the Cabinet.

Privileges Committee

The Privileges Committee of Parliament investigates allegations of breach of privilege of the House or its members. It is one of the Standing Committees of Parliament.

Composition

The Committee of Privileges consists of 15 members in the Lok Sabha (Lower House) and 10 members in the Rajya Sabha (Upper House). The Speaker (in Lok Sabha) or the Chairman (in Rajya Sabha) nominates the members of the Committee from among the members of the House.

- **Functions:**

  The main function of the Privileges Committee is to examine every question involving a breach of privilege of the House or of its members and to recommend appropriate action. The Committee has the power to:

  - Summon witnesses and examine them on oath
  - Call for documents and papers
  - Visit any place connected with the inquiry
  - Punish any person for contempt of the Committee

Types of Breach of Privilege

There are two main types of breach of privilege:

- **Breach of privilege of the House:** This is any act that obstructs or impedes the House in the performance of its duties. Examples include:
  - Refusing to give evidence to a parliamentary committee
  - Publishing false or misleading reports of parliamentary proceedings
  - Interfering with the free passage of members to or from the House
- **Breach of privilege of a member:** This is any act that reflects on the character or conduct of a member, or that interferes with the member's discharge of their parliamentary duties. Examples include:
  - Assaults or threats of violence against a member
  - Defamatory statements about a member
  - Imputations of corruption or dishonesty against a member

Procedure:

A question of privilege may be raised by any member of the House. If the Speaker or Chairman is satisfied that there is a prima facie case of breach of privilege, they will refer the matter to the Privileges Committee. The Committee will then investigate the matter and submit a report to the House. The **House may then take any action it deems fit, including:**

- Issuing a reprimand
- Suspending the member from the House
- Expelling the member from the House

Importance of the Privileges Committee

The Privileges Committee plays an important role in upholding the dignity and authority of Parliament. It ensures that members of the public and other bodies treat Parliament and its members with respect. The Committee also protects the rights and privileges of members, so that they are able to carry out their parliamentary duties without fear or favor.

The Significance of Parliamentary Committees in Indian Democracy

Parliamentary committees play a crucial role in Indian democracy by performing a range of essential functions that strengthen the legislative process, enhance government accountability, and promote effective governance.

- **Detailed Scrutiny of Legislation:**
  - Parliamentary committees provide a platform for in-depth examination of proposed laws, allowing MPs to analyze their implications, identify potential flaws, and suggest amendments.
  - This detailed scrutiny ensures that legislation is well-considered, reflects the concerns of various stakeholders, and aligns with the overall objectives of national policy.
- **Expert Advice and Consultation:**
  - Parliamentary committees engage with experts from diverse fields, including academics, industry professionals, and civil society representatives, to gain specialized knowledge and insights on the subject matter under consideration.
  - This expertise enhances the quality of committee deliberations and ensures that legislation is informed by the best available evidence and expertise.
- **Public Engagement and Participation:**
  - Parliamentary committees often invite public participation through hearings, written submissions, and online forums, allowing citizens to voice their concerns, share their experiences, and contribute to the legislative process.
  - This public engagement fosters transparency, inclusivity, and responsiveness to the needs and aspirations of the people.
- **Government Accountability and Oversight:**
  - Parliamentary committees hold the executive branch accountable for its actions and decisions by scrutinizing its policies, programs, and expenditures.
  - They examine government reports, question officials, and investigate allegations of wrongdoing, ensuring that the executive branch operates in a responsible and transparent manner.
- **Policy Development and Formulation:**
  - Parliamentary committees play a proactive role in shaping government policy by identifying areas for improvement, recommending reforms, and proposing innovative solutions.
  - Their insights and recommendations contribute to evidence-based policymaking and effective governance.
- **Capacity Building and Expertise Development:**
  - Parliamentary committees provide MPs with opportunities to develop their expertise in specific policy areas, enhance their understanding of complex issues, and strengthen their analytical and critical thinking skills.
  - This capacity building contributes to a more informed and competent legislature.

- **Consensus Building and Reconciliation:**
  - Parliamentary committees facilitate dialogue and consensus-building among MPs from different political parties, fostering cooperation and compromise in the legislative process.
  - This consensus-building approach promotes effective governance and reduces political polarization.

Declining Role of Parliamentary Committees

- Firstly, the proportion of Bills referred to Department Related Standing Committees (DRSCs) has decreased in recent years, with only 14 Bills referred for further examination during the course of the 17th Lok Sabha so far.
- Secondly, many committees have struggled to achieve the required quorum for meetings due to low attendance of MPs.
- Thirdly, too many ministries come under the purview of a single committee, making it challenging for committee members to scrutinize all the Bills and proposals adequately.
- Fourthly, the constitution of DRSCs for a year leaves very little time for specialization, leading to a lack of continuity and inadequate scrutiny of legislation.
- Finally, MPs often act along party lines rather than being agents of the legislature to hold the executive accountable, which reduces the effectiveness of these committees.
- Additionally, important Acts of Parliament are not being processed by any House committee, which further reduces their effectiveness.

Issues Faced by Parliamentary Committees

- **Dip in the number of Bills referred:** RTI Amendment Act (2019), and UAPA Amendment Act (2019) were passed without referring them to the Parliamentary committee.
- **Absenteeism of Members:** The attendance of about 50% since 2014-15 in committee meetings is a cause for concern.
- **Short tenure:** One year tenure of these committees is very little time for specializations as well as finishing a detailed review of complex topics.
  - For example, The IT panel could not for example, deliberations on "Safeguarding citizens" rights and prevention of misuse of social/online news media platforms including special emphasis on women's security in the digital space.
- **Lack of expertise:** Committee members lack the technical expertise required for detailed analysis of topics such as accounting and administrative principles.
- **Non-binding recommendations:** Only certain debates make reference to some reports and most of these reports are not taken for discussion in the parliament session.
- **The politicization of meetings:** Members have started taking strict party lines in meetings on Issues that are getting public attention.

What is the way forward?

- **Comprehensive Scrutiny:**
  - A robust law-making process requires a thorough examination by Parliament.
  - Scrutiny should not be influenced by the parliamentary majority or political consensus.
- **Mandatory Committee Referral:**
  - Ensure the robustness of the legislative process by making it mandatory to refer all Bills to Parliamentary committees.
  - Exceptions to this rule should be precisely defined.
- **Transparent Communication of Exceptions:**
  - Communicate any exceptions to the rule of committee referral to Parliament.
  - Provide detailed explanations for the exceptions to maintain transparency.
- **Committee Strengthening:**
  - Strengthen the capabilities of Parliamentary committees.
  - Empower committees to scrutinize bills effectively and present their reports promptly.
- **Timely Process:**
  - Enhance the efficiency of the legislative process by ensuring timely analysis and reporting by committees.
  - Avoid unnecessary delays in the scrutiny of bills.
- **Non-Partisan Process:**
  - Implement these measures to ensure that the legislative process remains non-partisan.
  - Regardless of the political party in power, all bills should undergo a well-defined process of debate and scrutiny.

Parliamentary Forums

Parliamentary forums are groups of parliamentarians who meet to discuss and exchange ideas on specific issues. They can be formal or informal, and they can be established by the parliament itself or by individual parliamentarians.

Composition

- It consists of the Speaker of Lok Sabha as the ex-officio President of all the Parliamentary Forums, except the

Parliamentary Forum on Population and Public Health where the Chairman of Rajya Sabha is the ex officio President and the Speaker of Lok Sabha is the ex-officio Co-President.

- Apart from the President, the Deputy Chairman of Rajya Sabha, Deputy Speaker of Lok Sabha, the Ministers concerned and Chairpersons of the respective Departmentally Related Standing Committee are ex officio Vice-Presidents of the Forum.
- Each Forum consists of not more than 31 Members (excluding the President, Co-President and Vice-Presidents) out of whom not more than 21 are from Lok Sabha and not more than 10 are from Rajya Sabha.
- Members other than the President and Vice- President of the Forums are nominated by the Speaker of Lok Sabha, and the Chairman of Rajya Sabha, as the case may be, from amongst the Leaders of various Political Parties.

Significance of Parliamentary Forums

Parliamentary forums play an important role in the democratic process by providing a platform for parliamentarians to:

- **Share information and expertise:** Parliamentarians can learn from each other's experiences and perspectives on different issues.
- **Develop new ideas and solutions:** Forums can be a breeding ground for innovative ideas and solutions to complex problems.
- **Build consensus:** Parliamentarians from different parties can come together to find common ground on issues.
- **Hold the government accountable:** Forums can scrutinize government policies and programs and hold ministers accountable for their actions.

Types of Parliamentary Forums

There are many different types of parliamentary forums, including:

- **All-party forums:** These forums are open to all parliamentarians, regardless of their party affiliation.
- **Issue-specific forums:** These forums focus on a specific issue, such as environment, health, or education.
- **Regional forums:** These forums bring together parliamentarians from different regions of a country.
- **International forums:** These forums bring together parliamentarians from different countries.

Examples of Parliamentary Forums

Parliamentary forums can be a valuable tool for parliamentarians and can play an important role in strengthening democracies.

- Here are some specific examples of parliamentary forums:
  - The **Inter-Parliamentary Union (IPU)** is a global organization of parliaments that brings together parliamentarians from around the world to discuss issues of common concern.
  - The **Parliamentary Assembly of the Council of Europe (PACE)** is an intergovernmental organization that brings together parliamentarians from 47 countries in Europe.
  - The **Parliamentary Forum on Sustainable Development (PFSD)** is a global forum that brings together parliamentarians from around the world to discuss issues related to sustainable development.
- These are just a few examples of the many parliamentary forums that exist around the world. Parliamentary forums play an important role in the democratic process and can help to make governments more accountable, responsive, and effective.

Indian Parliamentary Groups

A legislative assembly can have a parliamentary group, caucus, or party composed of members who belong to the same political party or electoral coalition. In 1949, the IPG was created as an independent entity following a resolution passed by the Constituent Assembly (Legislative) on August 16, 1948.

Rationale of the Indian Parliamentary Group

- Inter-parliamentary relations are important in a globalized world.
- A link should exist between parliaments for open discussion and exchange of ideas.
- India maintains this link through the Indian Parliamentary Group (IPG).
- The IPG is the National Group of Inter-Parliamentary Union (IPU).
- The IPG is also the Indian Branch of the Commonwealth Parliamentary Association (CPA), which is part of the Commonwealth of Nations.

Composition of the Indian Parliamentary Group:

- The Indian Parliamentary Group (IPG) is open to all members of Parliament and former members can become associate members with limited rights.
- Associate members do not have representation or travel concessions at meetings and conferences of the IPU and CPA.
- The Speaker of the Lok Sabha is the ex-officio president of the IPG.
- The Deputy Speaker of the Lok Sabha and the Deputy Chairman of the Rajya Sabha are the ex-officio vice-presidents of the IPG.
- The secretary general of the Lok Sabha serves as the ex-officio secretary-general of the IPG.

Objectives of the Indian Parliamentary Group

The aims of the IPG are as follows:

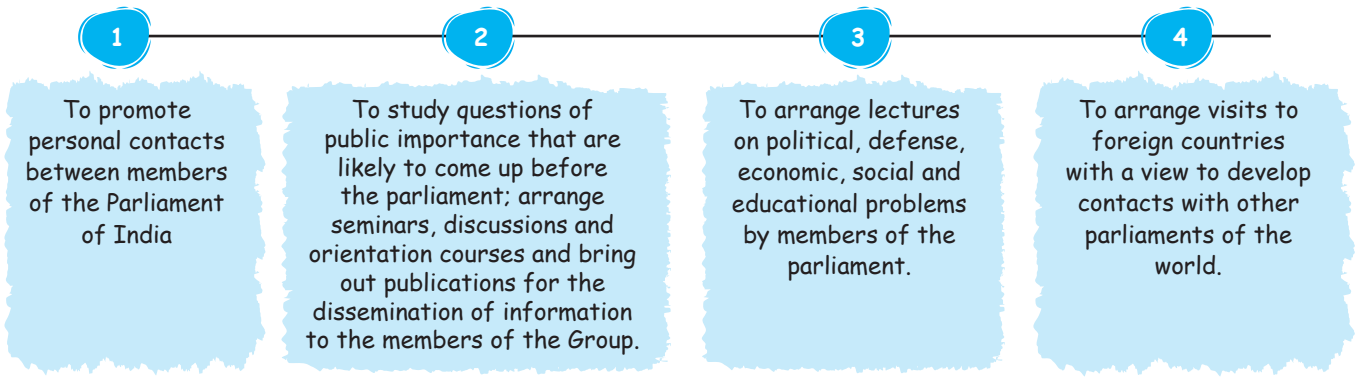

1
To promote personal contacts between members of the Parliament of India
2
To study questions of public importance that are likely to come up before the parliament; arrange seminars, discussions and orientation courses and bring out publications for the dissemination of information to the members of the Group.
3
To arrange lectures on political, defense, economic, social and educational problems by members of the parliament.
4
To arrange visits to foreign countries with a view to develop contacts with other parliaments of the world.

Fig. 19.6: Aims of the IPG

Functions of Indian Parliamentary Group:

- The Indian Parliamentary Group serves as a bridge between the Indian Parliament and various parliaments across the world.
- The group maintains this connection through goodwill missions, delegations, and other activities.
- It arranges for addresses by visiting heads of state and governments, as well as talks by prominent figures.
- Periodic seminars and symposia on parliamentary matters occur both nationally and internationally.
- Members of the group receive letters of introduction when traveling abroad.
- Only those who have been a part of the group for at least six months at the time of delegation composition may be included in Indian Parliamentary Delegations.

The Indian Parliamentary Group and IPU

The Inter-Parliamentary Union is an international organization of parliaments of sovereign states. At Present, the IPU consists of 153 parliaments and sovereign nations. **The Indian Parliamentary Group (IPG)** is a member of the Inter-Parliamentary Union.

- **The following are the advantages of being part of the IPU:**
  - It helps members of Indian parliamentary delegations to develop contacts with the parliamentarians of the member countries of the IPU.
  - The events provide an opportunity to understand contemporary changes/reforms taking place in various countries of the world.
  - It provides facilities to meet parliamentarians in different countries during tourism in abroad or in India.
  - The members of the group are eligible to visit foreign countries as members of the Indian Parliamentary delegation to Inter-Parliamentary Conferences.

In the recent past, members of the Group have been holding various positions on IPU bodies and under the same, the Group has been successful in putting the viewpoint of India on various important issues dealt in the IPU meetings.

IGNITE YOUR MIND

It is often seen that MPs who are members of parliamentary committees act in accordance to their affiliation with a political party rather than as agents of the legislature, whose one of critical role is to hold the executive accountable. This often reduces the effectiveness of these committees. What ways which the essence of partisanship could be reduced in the proceedings of these committees? In what ways can technology be used to ensure improvement of the proceedings of the committees?

CONCLUSION

Both Parliamentary Committees and Indian Parliamentary Groups are integral to the functioning and efficacy of India's Parliamentary democracy. Together, they enhance the depth and breadth of parliamentary work in India beyond the traditional legislative functions.

State Legislature

20

INTRODUCTION

The Constitution of India gives us a **federal structure** where the powers between the Central Government and the State Government are divided. So, the State Legislatures are an integral part of this federal structure, serving as the primary legislative bodies at the state level. **Part VI and Articles 168 to 212** of the Constitution deal with the matters related to the State Legislature in India. It deals with the organisation, composition, duration, officers, procedures, privileges, powers and so on of the state legislature.

- As per Article 168, State Legislature is composed of Governor, Legislative Assembly, and Legislative Council (in case of bicameral legislature).

Bicameral and Unicameral Legislature

- **Unicameral legislature:** It refers to having only one legislative chamber **(State Legislative Assembly),** which performs all the functions like enacting laws, passing a budget, and discussing matters of national and international importance. Most of the states in India have a unicameral legislature except for six states.
- **Bicameral legislature:** The state having two separate law-making Houses **(State Legislative Assembly + State Legislative Council)** to perform the functions like passing the budget and enacting laws. India has a bicameral legislature at the Centre level, and **only 6 States** have a bicameral legislature.
  - **These States are** Andhra Pradesh, Karnataka, Telangana, Maharashtra, Bihar, and Uttar Pradesh. No union territory has a legislative council. **(As per Article 168)**
  - **Note: The Tamil Nadu Legislative Council Act, 2010** to revive the legislative council in the State of Tamil Nadu is **yet to be implemented.**

Creation and Abolition of State Legislative Council

- The creation and abolition of the State Legislative Council are given in **Article 169** of the Indian Constitution.
- The Parliament can abolish a legislative council (where it already exists) or create it (where it does not exist), if the **legislative assembly of the concerned state passes a resolution** to that effect.
- Such a specific resolution must be passed by the state assembly by a **special majority**, that is, a **majority of the total membership of the assembly** and a majority of **not less than two-thirds of the members of the assembly present and voting.**
- This Act of Parliament is **not to be deemed as an amendment of the Constitution** for the purposes of **Article 368** and is passed like an ordinary piece of legislation (ie, by simple majority).
- The idea of having a second chamber in the states was criticised in the Constituent Assembly on the grounds that it was not representative of the people, that it delayed the legislative process and that it was an expensive institution.
- Consequently, the provisions were made for the abolition or creation of a legislative council to enable a state to have a second chamber or not according to its own willingness and financial strength.

Composition of the State Legislature

Article 170 of the Indian Constitution talks about the configuration of the Legislative Assemblies. This Article simply put emphasis on the structure of the Legislative Assemblies in the state. On the other hand, the configuration of the Legislative Council is given in **Article 171** of the Indian Constitution.

Composition of State Assembly (Vidhan Sabha):

- **Strength:** The Legislative Assembly of the state can have at most **500 constituencies and at least 60 constituencies**. However, there are several exceptions to the composition of the Legislative Assembly. For example - Mizoram, Sikkim, and Goa have less than 60 constituencies.
- **Nominated members:** The Governor could nominate one member from the Anglo-Indian community to the Legislative Assembly of State under Article 333 till 2019. However, this was **discontinued** after the enactment of the **104th Constitutional Amendment Act, 2019.**
- **Election of the Members:**
  - The Entire State is divided into several territorial constituencies by the Delimitation Commission.
  - The representatives of the territorial constituencies are elected through the process of **direct election.**

- **Territorial Constituencies:**
  - The constituencies are drawn in such a manner that the ratio between the population of each constituency and the number of seats allotted to it is the same throughout the state.
  - Here, by the term **"population",** we mean the latest population data which has been published in the preceding census.
- **Readjustment after each census:** The composition of the Legislative Assembly in any state can change according to the change in the population of that state.

  After each census, a readjustment is to be exercised in the:
  - Total number of seats in the assembly of each state and
  - The division of each state into territorial constituencies.
    - The **Parliament** is empowered to determine the **authority and the manner** in which it is to be made. Accordingly, Parliament enacted the **Delimitation Commission Acts** in 1952, 1962, 1972, and 2002 for this purpose.
  - The **84th Amendment Act of 2001** had frozen the following things **till the year 2026.**
    - The total number of seats in the Legislative Assembly of each State as readjusted on the basis of the 1971 census.
    - The division of such State into territorial constituencies as may be readjusted on the basis of the 2001 census.
- **Tenure of the Assembly:** As mentioned in **Article 172** of the Indian Constitution, the Legislative Assembly has a normal term of **five years.** Its tenure starts from the day of its first meeting.
  - However, **the Governor** is authorised to dissolve the assembly at any time (i.e., even before the completion of five years) under circumstances established by the law.
  - Its tenure can also be **extended** during the National Emergency. During the period of the National Emergency, the Parliament can extend the tenure of the Legislative Assembly for a period of a **maximum one year.** Also, this extension **should not be more than six months** after the proclamation has ceased to operate. This means that the assembly should be re-elected within six months after the revocation of the emergency.

Delimitation:

- **Meaning:** It is the act of redrawing boundaries of Lok Sabha and state Assembly seats to represent changes in population.
- **Objective:** The main objective of delimitation is to **provide equal representation to equal segments of a population.**
- **Delimitation Commission:** It is an **independent body** to carry out delimitation. It works in collaboration with the Election Commission of India without any executive influence.
- **Appointed by:** The **President of India** under provisions of the Delimitation Commission Act.
- **Composition:** A retired Supreme Court judge, the Chief Election Commissioner of India and respective State Election Commissioners.
- **Constitutional provisions:** The Commission's orders are final and **cannot be questioned before any court** as it would hold up an election indefinitely.
- **Previous Delimitation Commissions:** It have been set up four times — 1952, 1963, 1973 and 2002 under the Acts of 1952, 1962, 1972 and 2002.

State Legislative Council (Vidhan Parishad):

- **Strength:** The size of the State Legislative Council **cannot be more than 1/3rd** of the membership of the State Legislative Assembly. Also, its size **cannot be less than 40 members.**
  - Therefore, we can say that the **size of the council depends on the size of the assembly** of the concerned state.
  - **Note:** Here, it should be noted here that although the Constitution has fixed the maximum and the minimum limits, the actual strength of a Council is fixed by **Parliament**.
- **Election of the Members:** Out of the total members of the Council, following methods are used to elect members:

Total Members Elected	Elected By
1/3rd of the total members	By the members of local bodies in the state like municipalities, district boards, etc.
1/3rd of the total members	By the members of the legislative assembly of the state from amongst persons who are not members of the assembly.
1/12 of the total members	By graduates of three years standing and residing within the state.

1/12 of the total members	By teachers of three years standing in the state, not lower in standard than secondary school.
1/6 of the total members	Nominated by the Governor from amongst persons who have a special knowledge or practical experience of literature, science, art, cooperative movement and social service.

Note: This composition of a legislative council **(mentioned in Article 171)** as laid down in the Constitution is **tentative and not final**. The Parliament is authorised to modify or replace the same. However, it has not enacted any such law so far.

- **Tenure of the Council:** The legislative council is a **continuing chamber,** same as that of Rajya Sabha. It is a **permanent body** and is not subject to dissolution.
  - 1/3rd of its members retire on the expiration of every second year. So, a member continues as such for **six years.**
    - The tenure of six years is defined in **Section 156 of The Representation of People Act, 1951** and not in the Constitution
  - The vacant seats are filled up by fresh elections and nominations (by Governor) at the beginning of every third year.
  - The retiring members are also eligible for re-election and re-nomination any number of times.

Qualification (Article 173) and Disqualification (Article 192) of the Members of the State Legislature

State Legislature (Qualification of Members)

Qualifications (As per Constitution): Members should
• Be a citizen of India.
• Make and subscribe to an oath or affirmation before the person authorised by the Election Commission for this purpose and swears:
  ❒ To bear true faith and allegiance to the Constitution of India.
  ❒ To uphold the sovereignty and integrity of India.
• Must not be less than 30 years of age in the case of the legislative council and not less than 25 years of age in the case of the legislative assembly.
• Must possess other qualifications prescribed by Parliament.

Qualifications (As per Representation of People's Act, 1951): • **In legislative council:** Person must be an elector for an assembly constituency in the concerned state and to be qualified for the governor's nomination and he must be a resident in the concerned state. • **In legislative assembly:** Person must be an elector for an assembly constituency in the concerned state. • **For reserved seats:** Person must be a member of a scheduled caste or scheduled tribe if he wants to contest a seat reserved for them. However, a member of scheduled castes or scheduled tribes can also contest a seat not reserved for them.

Disqualification (As per Contitution)	❑ If the member holds any **office of profit** under the Union or state government (except that of a minister or any other office exempted by state legislature), ❑ Member with **unsound mind and stands** so declared by a court, ❑ Member is an **undischarged insolvent,** ❑ Member is **not a citizen of India** or has voluntarily acquired the citizenship of a foreign state or is under any acknowledgement of allegiance to a foreign state, and ❑ Member is so disqualified **under any law made by Parliament.**
Disqualification (As per Representation of People's Act, 1951)	❑ Member must not have been found guilty of certain **election offences or corrupt practices** in the elections. ❑ Member must not have been convicted for any offence resulting in **imprisonment for two or more years.** But, the detention of a person under a preventive detention law is not a disqualification. ❑ Member must not have failed to lodge an account of his election expenses within the time. ❑ Member must not have any interest in government contracts, works or services.

	❑ Member must **not be a director or managing agent** nor hold an office of profit in a corporation in which the government has at least 25% share. ❑ Member must not have been dismissed from government service for corruption or disloyalty to the state. ❑ Member must not have been convicted for promoting enmity between different groups or for the offence of bribery. ❑ Member must not have been punished for preaching and practicing social crimes such as untouchability, dowry and sati. ❑ (Note: On the question whether a member has become subject to any of the above disqualifications, the governor's decision is final. However, he should obtain the opinion of the Election Commission and act accordingly.
Disqualification (As per Anti-Defection Law)	❑ As per **10th Schedule of the Constitution**, a person shall be disqualified for being a member of either House of state legislature if he is so disqualified on the ground of defection. ❑ The question of disqualification under the Tenth Schedule is decided by the **Chairman,** in the case of legislative council and, **Speaker**, in the case of legislative assembly (and **not by the governor**). ❑ In 1992, the Supreme Court ruled **that the decision of Chairman/Speaker in this regard is subject to judicial review.**

Vacation of Seats (Article 190)

In the following cases, a member of the state legislature vacates his seat:

❑ **Double Membership:** A person cannot be a member of both Houses of the state legislature, and he/she needs to vacate one of the seats as per the provisions of a **law made by the state legislature.**

- No person shall be a member of the Legislatures of two or more States.
  - ❒ If a person is chosen a member of the Legislatures of two or more such States, then, at the expiration of such period as may be specified in rules made by the President, that person's seat in the Legislatures of all such States shall become vacant, unless he has previously resigned his seat in the Legislatures of all but one of the States.

IGNITE YOUR MIND

Do you know, which seat of a member of Parliament gets vacated when he/she elected in both the Houses of the Parliament?

❑ **Disqualification:** If a member of a House of the Legislature of a State:

- ❒ Becomes subject to any of the disqualifications mentioned in clause (1) or clause (2) of article 191; or
- ❒ Resigns his seat by writing under his hand addressed to the speaker or the Chairman, as the case may be, and his resignation is accepted by the Speaker or the Chairman, as the case may be, his seat shall thereupon become vacant.

❑ **Absence:** If, for a period of sixty days, a member of a House of the Legislature of a State is without permission of the House absent from all meetings thereof, the House may declare his seat vacant.

❑ **Other Cases:** A member has to vacate his seat in either House of State Legislature, if the election is declared void by the court, if expelled by the House if elected to the office of President or office of vice-President, and if appointed to the office of Governor of a state.

Oath or Affirmation by the Members of the State Legislature

❑ As per **Article 188 of the Constitution**, every member of the Legislative Assembly or the Legislative Council of a State shall, before taking his seat, make and subscribe before the Governor or some person appointed in that behalf by him, a declaration according to the form set out for the purpose in the **Third Schedule.**

❑ **In this oath, a member of the state legislature swears:**

- To bear true faith and allegiance to the Constitution of India
- To uphold the sovereignty and integrity of India and
- To faithfully discharge the duty of his office.

Powers and Duties of the Speaker:

❑ The primary responsibiliy is to maintain order and decorum in the assembly for conducting its business and regulating its proceedings.

❑ He/she is the final interpreter of the provisions of the Constitution of India, the rules of procedure and conduct of business of assembly, and the legislative precedents, within the assembly.

- ❑ He/she adjourns the assembly or suspends the meeting in the absence of a quorum.
- ❑ He/she does not vote in the first instance. But he/she can exercise a casting vote in the case of a tie.
- ❑ He/she decides whether a bill is a Money Bill or not and his/her decision on this question is final.
- ❑ He/she decides the questions of disqualification of a member of the assembly, arising on the ground of defection under the provisions of the Tenth Schedule.
- ❑ He/she appoints the chairman of all the committees of the assembly and supervises their functioning.
- ❑ He/she himself is the chairman of the Business Advisory Committee, the Rules Committee and the General Purpose Committee.

IGNITE YOUR MIND

In his book 'The Republic', Plato advocates that there will be no end to the troubles of state, or humanity itself, until philosophers become kings or till those whom we call kings become philosophers. Based on Plato's view, do you agree that legislators should have a 'minimum education qualification', as some states have mandated for the Panchayat elections?

Presiding Officers of both the Houses

Each House of State legislature has its **presiding officer.** The presiding officer of the assembly is known as **'Speaker'** whereas the presiding officer of the Council is known as **'Chairman'** of the House. Besides that, the Deputy Speaker and a panel of chairmen in the assembly and the Deputy Chairman and a panel of vice-chairmen are also appointed in the Council.

Speaker, Deputy Speaker, and panel of Chairman of Legislative Assembly:

- ❑ **Speaker:**
  - **Article 178 gives the power to the Speaker** to preside over the sessions of the Legislative Assembly of the state. He maintains discipline and order in the assembly.
  - The assembly selects its Speaker from among its own members through an election process.
- ❑ **Deputy Speaker:**
  - Like the Speaker, the Deputy Speaker is also elected by the assembly itself from amongst its members. He is elected after the election of the Speaker has taken place.
    - ❒ The Deputy Speaker **performs** the duties of the Speaker's office when it is vacant.
    - ❒ He also **acts as** the Speaker when the latter is absent from the sitting of the assembly. In both cases, he has all the powers of the Speaker.

Removal of Speaker and Deputy Speaker (Article 179):

- ❑ A member holding office as Speaker or Deputy Speaker of an Assembly —
  - shall vacate his office if he **ceases to be a member** of the Assembly
  - may at any time by **resignation** addressed to the Deputy Speaker (in case of resignation by Speaker) or to Speaker (in case of resignation by Deputy Speaker)
  - may be removed from his office by a **resolution of the Assembly** passed by a **majority of all the then members of the Assembly:**
    - ❒ Provided that no resolution for the purpose shall be moved unless at least **fourteen days' notice** has been given of the intention to move the resolution:

Panel of Chairman:

- ❑ The Speaker nominates from amongst the members a panel of chairman.
  - Any one of them can preside over the assembly in the absence of the Speaker or the Deputy Speaker.
  - He has the same powers as the speaker when so presiding. He holds office until a new panel of chairman is nominated.

Chairman, Deputy-Chairman, and panel of Vice-Chairman of the Council:

- ❑ **Chairman:**
  - According to **Article 182** of the Indian Constitution, the Legislative Council must choose its two members as Chairman and Deputy Chairman. The Chairman is elected by the council itself from amongst its members.
  - As a presiding officer, the powers and functions of the Chairman in the council are similar to those of the Speaker in the assembly.
  - However, the **Speaker has one special power** which is not enjoyed by the Chairman. The Speaker decides whether a bill is a **Money Bill or not** and his decision on this question is final.

Note:

- ❑ The salaries and allowances of the Speaker and the Deputy Speaker of the Assembly and the Chairman and the Deputy Chairman of the Council are fixed by the state legislature. They are charged on the **Consolidated Fund of the State** and thus are not subject to the annual vote of the state legislature.

❑ **Deputy Chairman:**

- As per **Article 184,** the Deputy Chairman performs the duties of the Chairman's office when it is vacant.
- He also acts as the Chairman when the latter is absent from the sitting of the council. In both the cases, he has all the powers of the Chairman.

Removal of Chairman and Deputy Chairman:

❑ A member holding office as Chairman or Deputy Chairman of a Legislative Council—

- shall vacate his office if he **ceases to be a member** of the Council;
- may at any time by **resignation** addressed to the Deputy Chairman (in case of resignation by Chairman) or to Chairman (in case of resignation by Deputy Chairman)
- may be removed from his office by a **resolution of the Council** passed by a **majority of all the then members of the Council:**
  - ❐ Provided that no resolution for the purpose shall be moved unless at least **fourteen days' notice** has been given of the intention to move the resolution.

Panel of Vice-Chairman:

❑ The Chairman nominates from among the members a panel of vice-chairman who can preside over the council in the absence of the Chairman or the Deputy Chairman.

- He/She has the same powers as the chairman when so presiding.
- He/She holds office until a new panel of vice-chairman is nominated.

Procedures Related to the Session of the State Legislature

Summoning: As per Article 174, the Governor occasionally summons each House of State legislature to meet at places and at such times that he/she thinks fit or appropriate.

❑ The maximum gap between the two sessions of the state legislature **cannot be more than six months**, i.e., the state legislature should meet at least **twice a year.**

❑ A session of the state legislature consists of many sittings.

Adjournment: An adjournment suspends the work in a sitting for **a specified time** which may be hours, days or weeks.

❑ **Adjournment sine die** means terminating a sitting of the state legislature for **an indefinite period.**

❑ The power of the adjournment as well as adjournment sine die **lies with the presiding officer** of the House.

Prorogation: The presiding officer (Speaker or Chairman) declares the House adjourned sine die, when the business of the session is completed.

❑ Within the next few days, **the Governor** issues a notification for prorogation of the session.

❑ However, the Governor can also prorogate the House which is in session. Unlike an adjournment, a **prorogation terminates a session** of the House.

Dissolution: The legislative council is a permanent house, and is not subject to dissolution. Only the legislative assembly is subject to dissolution.

❑ Unlike a prorogation, a **dissolution ends the very life of the existing House**, and a new House is constituted after the general elections.

❑ The position of bills pending for its enactment faces the following actions on the dissolution of the assembly:

• Bill pending in the assembly, whether originating in the assembly or transmitted to it by the council.	**Lapse**
• Bill passed by the assembly but is pending in the council.	**Lapse**
• Bill pending in the council but not passed by the assembly.	**Does not lapse**
• Bills passed by the assembly (in a unicameral state) or passed by both the houses (in a bicameral state) but pending assent of the Governor or the President.	**Does not lapse**
• Bill passed by the assembly (in a unicameral state) or passed by both the Houses (in a bicameral state) but returned by the President for reconsideration of House (s)	**Does not lapse**

Quorum: It is the **minimum number of members** required to be present in the House before it can transact any business.

❑ It is **ten members or one-tenth** of the total number of members of the House (including the presiding officer), whichever is greater.

❑ If there is no quorum during a meeting of the House, it is the duty of the presiding officer either to adjourn the House or to suspend the meeting until there is a quorum.

Voting in House: All matters at any sitting of either House are decided by a majority of votes of the members present and voting **excluding the presiding officer.**

- ❑ Only a few matters like removal of the speaker of the assembly, removal of the Chairman of the council and so on require effective majority or special majority, not ordinary majority.
- ❑ The presiding officer (i.e., Speaker in the case of assembly or chairman in the case of council or the person acting as such) **does not vote in the first instance**, but exercises a casting vote in the case of an equality of votes.

Language in the State Legislature: All the proceedings in the State Legislature like the law-making process should be in the official language or in the language of the state or in Hindi or in English. It is given in **Article 210** of the Indian Constitution.

- ❑ However, the presiding officer can permit a member to address the House in his mother-tongue.

Rights of Ministers and Advocate General: Every minister and the advocate general of the state have the right to speak and take part in the proceedings of **either House or any of its committees** of which he is named a member, without being entitled to vote.

- ❑ There are two reasons underlying this Constitutional provision:
  - A minister can participate in the proceedings of a House, of which he is not a member.
  - A minister, who is not a member of either House, can participate in the proceedings of both the Houses.

Legislative Procedure in the State Legislature

- ❑ As per **Article 196** of the Constitution, except for the **Money Bill and the Financial Bill (Article 198 and 207 respectively)**, an ordinary bill can originate in either House of the state legislature (in case of a bicameral legislature). Such a bill can be introduced either by a minister or by any other member.

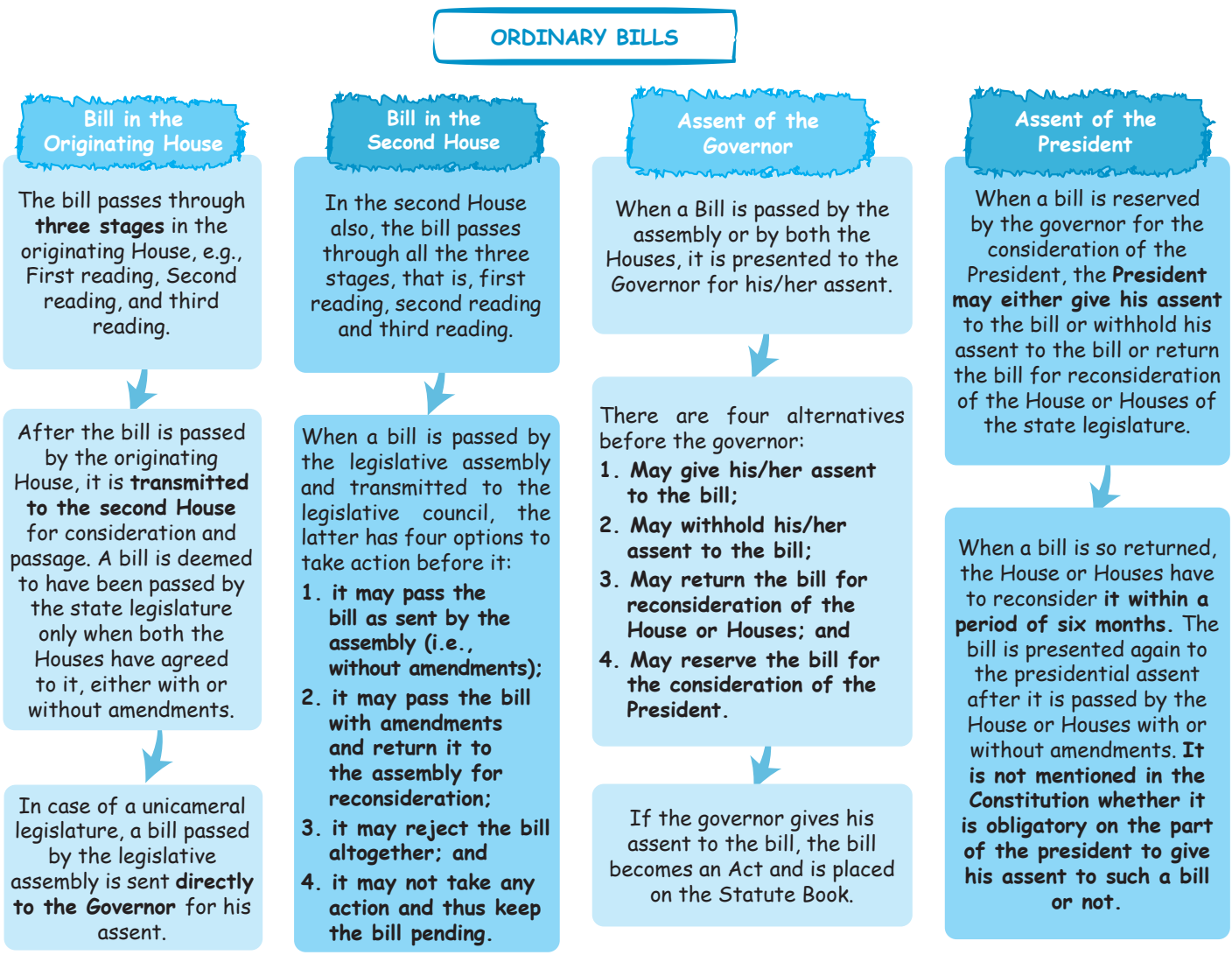

ORDINARY BILLS
Bill in the Originating House
The bill passes through three stages in the originating House, e.g., First reading, Second reading, and third reading.
After the bill is passed by the originating House, it is transmitted to the second House for consideration and passage. A bill is deemed to have been passed by the state legislature only when both the Houses have agreed to it, either with or without amendments.
In case of a unicameral legislature, a bill passed by the legislative assembly is sent directly to the Governor for his assent.
Bill in the Second House
In the second House also, the bill passes through all the three stages, that is, first reading, second reading and third reading.
When a bill is passed by the legislative assembly and transmitted to the legislative council, the latter has four options to take action before it:
1. it may pass the bill as sent by the assembly (i.e., without amendments);
2. it may pass the bill with amendments and return it to the assembly for reconsideration;
3. it may reject the bill altogether; and
4. it may not take any action and thus keep the bill pending.
Assent of the Governor
When a Bill is passed by the assembly or by both the Houses, it is presented to the Governor for his/her assent.
There are four alternatives before the governor:
1. May give his/her assent to the bill;
2. May withhold his/her assent to the bill;
3. May return the bill for reconsideration of the House or Houses; and
4. May reserve the bill for the consideration of the President.
If the governor gives his assent to the bill, the bill becomes an Act and is placed on the Statute Book.
Assent of the President
When a bill is reserved by the governor for the consideration of the President, the President may either give his assent to the bill or withhold his assent to the bill or return the bill for reconsideration of the House or Houses of the state legislature.
When a bill is so returned, the House or Houses have to reconsider it within a period of six months. The bill is presented again to the presidential assent after it is passed by the House or Houses with or without amendments. It is not mentioned in the Constitution whether it is obligatory on the part of the president to give his assent to such a bill or not.

Fig. 20.1: Legislative Procedure in the State Legislature

In the second House following options are available:

- **When a Bill which is originated in the Assembly transferred to Council:**
  - A Bill shall be deemed to have been passed by the Houses of the Legislature of a State, when the State Legislative Council passes the bill without any amendments or the Assembly accepts the amendments suggested by the council. It is transferred for the assent of the Governor.
  - When the assembly rejects the amendments suggested by the council or the council rejects the Bill altogether or the council does not take any action **for three months,** then the assembly may pass the bill again and transmit the same to the council.
  - If the council rejects the bill again or passes the bill with amendments not acceptable to the assembly or does not pass the bill **within one month**, then the bill is **deemed to have been passed by both the Houses** in the form in which it was passed by the assembly for the second time.
  - Therefore, the **ultimate power of passing an ordinary bill is vested in the assembly.** At the most, the council can **detain or delay the bill for a period of four months**–three months in the first instance and one month in the second instance.
  - The Constitution **does not provide for the mechanism of joint sitting** of both the Houses to resolve the disagreement between the two Houses over a bill (like in case of Parliament).
- **When a Bill is transferred from Council to Assembly:** When a bill, which has originated in the council and was sent to the assembly, is rejected by the assembly, the bill **ends and becomes dead.** Thus, the council has been given much lesser significance, position and authority than that of the Rajya Sabha at the Centre.

Assent to Bills (Article 200):

- The Bill after getting passed by both Houses is then sent to the Governor. It then comes under the discretion of the Governor whether to give:
  - **Assent to the Bill** (If he/she gives his/her assent, the bill becomes an Act and is placed on the Statute Book).
  - **Withhold his assent** (the bill ends and does not become an Act).
  - **Return the bill for reconsideration of the House or Houses** (if the bill is passed by the House or both the Houses again, with or without amendments, and presented to the Governor for his assent, the Governor **must give his assent** to the bill. Thus, the Governor enjoys only a **suspensive veto**).
  - **Reserve the bill for the consideration of the President.**

Bills reserved for President's consideration (Article 201):

- When a Bill is reserved for consideration of the President, he/she may either give his assent to the bill or withhold his assent to the bill or return the bill for reconsideration of the House or Houses of the state legislature.
- The President may direct the Governor to return the Bill (except money Bill) to the House or the Houses of the Legislature.
- When a Bill is so returned, the House or Houses shall reconsider it accordingly **within a period of six months** from the date of receipt of such message and, if it is again passed by the House or Houses with or without amendment, it shall be presented again to the President for his consideration. Here, it should be noted that, it is **not mentioned in the Constitution** whether it is obligatory on the part of the President to give his assent to such a bill or not.

Money Bills

The procedure to pass a Money Bill is quite different from the Ordinary Bill. Its procedure is given in **Article 198** of the Constitution. According to this Article of the Constitution of India, the Money Bill can **'only'** be introduced in the Lower House i.e., in the Legislative Assembly. Procedure related to the money Bill is as follows:

- **Money Bill in Assembly:** Every such bill is considered a government bill and can be **introduced only by a minister.**
  - After the Money Bill is passed by the Legislative Assembly, then this bill would be forwarded to the Legislative Council for its recommendations.
- **Money Bill in Council:** The Bill should be returned to the assembly **within fourteen days** from the date of receiving the bills.
  - It **cannot reject or amend**, but can **only recommend** changes in the Money Bill.
  - If the legislative council does not return the bill to the legislative assembly within 14 days, the bill is deemed to have been passed by both Houses.
  - The assembly can either accept the recommendation or can deny any recommendations according to the discretion of the assembly.

- **Bill for the assent of the Governor:** When a Money Bill is presented to the governor, he may either **give his assent, withhold his assent or reserve the bill for Presidential assent but cannot return** the bill for reconsideration of the state legislature.
  - Normally, the Governor gives his assent to a money bill as it is introduced in the state legislature with his prior permission.

IGNITE YOUR MIND

In recent years the media has reported numerous conflicts between state governments and Governors, who have not approved the bills or delayed them. These disputes harm the government's smooth working and question the huge powers of unelected officials. Do such incidents threaten democracy and people's representation at the state level?

- **When a money bill is reserved for consideration of the President:** The President may either give his assent to the bill or withhold his assent to the bill but cannot return the bill for reconsideration of the state legislature.

Definition of Money Bills:

As per Article 199, a Bill shall be deemed to be a Money Bill if it contains only provisions dealing with all or any of the following matters, namely:—

(a) the imposition, abolition, remission, alteration or regulation of any tax;

(b) the regulation of the borrowing of money or the giving of any guarantee by the State, or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the State;

(c) the custody of the Consolidated Fund or the Contingency Fund of the State, the payment of money into or the withdrawal of money from any such Fund;

(d) the appropriation of moneys out of the Consolidated Fund of the State;

(e) the declaring of any expenditure to be expenditure charged on the Consolidated Fund of the State, or the increasing of the amount of any such expenditure;

(f) the receipt of money on account of the Consolidated Fund of the State or the public account of the State or the custody or issue of such money; or

(g) any matter incidental to any of the matters specified in sub-clauses (a) to (f).

- A Bill shall not be deemed to be a Money Bill by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the **imposition, abolition, remission, alteration or regulation of any tax** by any local authority or body for local purposes.
- If any question arises whether a Bill introduced in the Legislature of a State which has a Legislative Council is a Money Bill or not, the decision of the Speaker of the Legislative Assembly of such State thereon shall be final.

Procedure in Financial Matters (Articles 202 to 207)

The State Legislature of every state follows a special procedure in the matters related to finance. These procedures are given in Article 202 to Article 207 of the Indian Constitution. The procedure which is mentioned in these articles are as follows:

- **Article 202 (Annual Financial Statement or Budget):** It is the duty of the Governor to lay down the estimated receipts and expenditure of the State for that year. It is known as the Annual Financial Statement. The **term budget is nowhere used** in the Constitution.
- **Article 203 (Procedure in the legislature related to estimates):**
  - The estimates that relate to expenditure charged from the Consolidated Fund of a State should not be submitted to a vote of the Legislative Assembly. But it can only be discussed by the state legislature.
  - Demand for a grant can be made only on the recommendation of the Governor.
- **Article 204 (Appropriation Bill):** After making the grants under Article 203, the assembly shall introduce a bill that will provide for the appropriation out of the Consolidated Fund of the State for the matters related to which demand for grant and expenditure charged on the Consolidated Fund of the State has been approved by the assembly.
- **Article 205 (Supplement, Additional or excess grants):**
- **Supplementary Grant:** It is granted when the amount authorised by the State Legislature through the Appropriation Act for a particular service for the current financial year is found to be insufficient for that year.
- **Additional Grant:** It is granted when a need has arisen during the current financial year for additional expenditure upon some new service not contemplated in the budget for that year.

- **Excess Grant:** It is granted when money has been spent on any service during a financial year in excess of the amount granted for that service in the budget for that year.
- **Article 206 (Vote on Accounts, Votes of Credit or Exceptional Credits):**
- **Vote on Accounts:** To overcome the challenge of financial need till appropriation Bill is passed on demand for grants, the Constitution has authorised the State Assembly to make any grant in advance with respect to the estimated expenditure. This provision is known as the **'vote on account'.** It is passed (or granted) after the general discussion on budget is over.
  - **Vote of Credit:** It is granted for meeting an unexpected demand upon the resources of the State, when on account of the magnitude or the indefinite character of the service, the demand cannot be stated. It is like a blank cheque given to the Executive.
  - **Exceptional Grant:** It is granted for a special purpose and forms no part of current service of any financial year.
- **Article 207 (Special Provisions related to Financial Bills):** A Financial Bill should not be introduced in the Legislative Council and can only be introduced or moved in the Legislative Assembly with the recommendation of the Governor.

Comparing Powers of the State Legislative Assembly and Council

Spheres where council is equal to assembly:

- Introduction and passage of ordinary bills. However, in case of disagreement between the two Houses, the will of the Assembly prevails over that of the Council.
- Approval of ordinances issued by the governor.
- Selection of ministers, including the Chief Minister. Under the Constitution, the ministers, including the Chief Minister, can be members of either House of the state legislature. However, irrespective of their membership, they are responsible only to the Assembly.
- Consideration of the reports of the Constitutional bodies like the State Finance Commission, State Public Service Commission, and Comptroller and Auditor General of India.
- Enlargement of the jurisdiction of the state public service commission.

Spheres where council is unequal to assembly:

- **Related to Money Bill:** It can be introduced only in the assembly and not in the council.
  - The council **cannot amend or reject a money bill**. It should return the bill to the assembly within 14 days, either with recommendations or without recommendations.
  - The **assembly can either accept or reject** all or any of the recommendations of the council. In both the cases, the money bill is deemed to have been passed by the two Houses.
  - The final power to decide whether a particular bill is a money bill or not is vested in the Speaker of the assembly.
- **Related to ordinary Bill:** The final power of passing an ordinary bill also lies with the Assembly.
  - At most, the council can detain or delay the bill for the period of four months–three months in the first instance and one month in the second instance.
  - When an ordinary bill, which has originated in the council and was sent to the assembly, is rejected by the assembly, the bill ends and becomes dead.
- **Related to budget:** The council can only discuss the budget but cannot vote on the demands for grants (which is the exclusive privilege of the assembly).
- **Related to no-confidence motion:** The council cannot remove the council of ministers by passing a no-confidence motion.
- **Related to election of President:** The council does not participate in the election of the President of India and representatives of the state in the Rajya Sabha.
- **Related to Constitutional amendment:** The council has no effective say in the ratification of a Constitutional Amendment Bill. In this respect also, the will of the assembly prevails over that of the council.
- **Related to the existence of the Council itself:** The very existence of the council depends on the will of the assembly. The council can be abolished by the Parliament on the recommendation of the assembly.

Comparing State Legislative Council with Rajya Sabha -

- The position of the council with respect to the assembly is much weaker than the position of the Rajya Sabha vis-a-vis the Lok Sabha.
- The Rajya Sabha has equal powers with the Lok Sabha in all spheres except financial matters and with regard to the control over the Government. On the other hand, the council is subordinate to the assembly in all respects. Thus, the predominance of the assembly over the council is fully established.
- The Constitution has given the council much lesser importance than the Rajya Sabha due to the following reasons:
  - **Representation of states at the national level:** The Rajya Sabha represents the states and union territories at the national level. Members of the

Rajya Sabha are elected by the elected members of the Legislative Assemblies of States and Union territories, as well as by the members of the Electoral College for Union territories without Legislative Assemblies.

- **Federal structure:** The Rajya Sabha plays a crucial role in maintaining the federal structure of the country by ensuring that states have a say in the central legislation.
- **Special powers:** The Rajya Sabha has certain special powers, such as approving the proclamation of Emergency and approving the creation of All India Services.
- **Permanent House:** Unlike the State Legislative Council, the Rajya Sabha is a permanent house and is not subject to abolition (similar to Article 169). This ensures continuity in the functioning of the upper house at the national level.

IGNITE YOUR MIND

The State Legislative Council (also known as Vidhan Parishad) has some legislative and representative functions but is not in line with the Rajya Sabha. It helps to improve parliamentary democracy by raising administrative issues. It exists only in six states in India. Do you support having Vidhan Parishad in other states too? If yes, what are the eligibility criteria for the states you think of?

Utility and critique of Legislative Council in a State:

Utility	Critique
❑ **Representation of diverse interests:** The Legislative Council provides a forum for the representation of various sections of society, including experts, professionals, and individuals with specialised knowledge.	❑ **Cost and resources:** Maintaining a bicameral legislature can be expensive in terms of resources and finances and it may not be justified, especially if it doesn't significantly enhance the legislative process.
❑ **Review and revision of legislation:** Council acts as a revising chamber, offering a second opinion on legislation passed by the Legislative Assembly.	❑ **Risk of gridlock:** A bicameral system can sometimes lead to legislative gridlock if there are conflicts between the two houses. This can hinder the swift passage of important legislation and impact governance.
❑ **Continuity and stability:** Members of the Legislative Council are often elected for longer terms compared to the Legislative Assembly, providing continuity and stability in the legislative process.	❑ **Possibility of unequal representation:** The method of election to the Legislative Council may not ensure equal representation, leading to potential biases and a lack of true democratic representation.
❑ **Avoiding hasty decision-making:** The presence of a second chamber allows for more thorough debate and consideration of issues before legislation is passed, and avoids hasty decisions.	❑ **Potential for political patronage:** The nomination process for certain categories of members may be susceptible to political patronage rather than merit.
❑ **Representation of local interests:** Legislative Councils may have representation based on local bodies, graduates, teachers, and other specific interest groups. This can ensure that a variety of local interests are taken into account during the legislative process.	❑ **Limited power & public visibility:** The power of Council is minimal compared to that of legislature and may receive less public attention compared to that of the Legislative Assembly, which can reduce transparency and public awareness of the legislative process.

Issues faced by state legislature:

- ❑ **Legislative assemblies are treated as paragons of virtue:** The MLAs and MLCs often tend to violate the decorum of the House with activities like climbing on Speaker's dais as seen in Karnataka's state council during passage of anti-cow slaughter bill.
- ❑ **Reduction in time for deliberation:** The time duration allocated for framing policies has reduced as the legislators rarely visit the assemblies. **For example,** Haryana recorded an average of 12 assembly sittings and Kerala having the highest stands at 48 days.
- ❑ **Legislative business:** Based on the data from 2015, the average number of bills passed per year are 19, and it is as low as 10 for North Eastern States. These are disturbing figures considering three sessions yearly.
- ❑ **Scrutiny of budget:** Most of the states do not enjoy time like parliament on budgets. They take up discussion of important ministries and rest are guillotined.
- ❑ **Limitation regarding certain types of Bills:**
  - Certain types of Bills cannot be moved in the State Legislature without the previous sanction of the President of India.
  - Certain Bills passed by the State Legislature cannot become operative until they receive the President's assent after having been reserved for his consideration by the Governor.

Way Forward:

- **Live telecast all proceedings of all state assemblies:** Live telecast of proceedings will ensure performance is monitored by citizens in real-time, thereby improving the quality of legislation and debates on matters of public importance.
- **Disclosure through RTI:** Citizens should collectively demand mandatory disclosure of the text of legislative debates and questions on assembly websites by all states under the RTI Act, 2005.
- **Constitutional amendment:** To fix the minimum number of days assemblies must sit (in days) in a year.
- **Bilingual websites and documents:** All government resolutions at the state level, including assembly websites, should be translated into English and be available along with the vernacular language of the state, to ensure more readability and hence more civic and media engagement with state policies and actions.
- **Involvement of various stakeholders and beneficiaries during the drafting of state laws:** Unlike the Centre, where draft bills are often shared by ministries for public comments, the process of conceiving, deliberating, and passing of state laws is rather obscure. All states must practice inclusive policy-making.

Privileges to the members of State Legislature

Article 194 of the Indian Constitution grants privileges to the members of the legislature of a state. Members of the State Legislature enjoy certain privileges to ensure the smooth functioning of the legislative process. These privileges are granted to protect the dignity and independence of the State Legislature and its members.

- **Need:** To secure the independence and effectiveness of their actions and to protect the members from any obstruction in the discharge of their legislative responsibilities.
- **Extension of these privileges:** To persons who are entitled to speak and take part in the proceedings of a House of the State Legislature or any of its committees. For Example: Advocate-General of the state and state ministers.
- **Do not cover:** These privileges are not extended to the Governor who is also an integral part of the state legislature.
- **Types:** The privileges of a state legislature can be classified into two broad categories – collective privileges, and individual privileges.

COLLECTIVE PRIVILEGES (BELONGING TO EACH HOUSE)

1. It has the right to publish its reports, debates and proceedings and also the right to prohibit others from publishing the same.
2. It can exclude strangers from its proceedings and hold secret sittings to discuss some important matters.
3. It can make rules to regulate its own procedure and the conduct of its business and to adjudicate upon such matters.
4. It can punish members as well as outsiders for breach of its privileges or its contempt by reprimand, admonition or imprisonment (also suspension or expulsion, in case of members).
5. It has the right to receive immediate information of the arrest, detention, conviction, imprisonment and release of a member.
6. It can institute inquiries and order the attendance of witnesses and send for relevant papers and records.
7. The courts are prohibited to inquire into the proceedings of a House or its Committees.
8. No person (either a member or outsider) can be arrested, and no legal process (civil or criminal) can be served within the precincts of the House without the permission of the presiding officer.

INDIVIDUAL PRIVILEGES (BELONGING TO EACH MEMBER)

1. They cannot be arrested during the session of the state legislature and 40 days before the beginning and 40 days after the end of such session.
   - This privilege is available only in civil cases and not in criminal cases or preventive detention cases.
2. They have freedom of speech in the state legislature.
   - No member is liable to any proceedings in any court for anything said or any vote given by him in the state legislature or its committees.
   - This freedom is subject to the provisions of the Constitution and to the rules and standing orders regulating the procedure of the state legislature.
3. They are exempted from jury service.
   - They can refuse to give evidence and appear as a witness in a case pending in a court when the state legislature is in session.

Fig. 20.2: Collective Privileges (Belonging to each House and Member)

Privileges and Their Evolution:

- **Origin at British Parliament:** Introduced to protect legislators in the House of Commons from arrest and harassment when they criticized the monarchy.
- **Adoption in Indian context:** India's founding fathers provided absolute freedom of speech to parliamentarians within the house, even as citizens' freedom remained restricted. This decision was upheld by the Supreme Court.
- **Power to Codify:** The founding fathers vested the power to codify privileges with Parliament. However, current legislators resist codification fearing a loss of parliamentary sovereignty. This was highlighted in the **P.V. Narsimha Rao Case.**
- **Current Scenario:** Parliamentarians enjoy immunity from arrest during sessions and 40 days prior, essentially granting them immunity for over 365 days each year. Slapping of privileges on citizens, civil servants, and journalists is commonly observed.

Importance of Parliamentary Privileges:

- **Ensuring Functionality:** Privileges such as freedom from arrest and freedom of speech primarily exist to ensure the House can perform its functions without hindrance.
- **Protection of Members:** The power to punish for contempt and to regulate its own Constitution exists for the protection of members and the vindication of the House's authority and dignity.
- **Preventing External Interference:** Privileges are granted to enable legislators to carry out their duties without fear or favor and to prevent external interference.

Issues with Parliamentary Privileges:

- **Conflict with Constitutionalism:** The power of legislators to be the sole judges of their privileges and breaches undermines constitutionalism.
- **Misuse of Privileges:** Instances of misuse, such as the 2017 case where two journalists were imprisoned on the order of the Karnataka Assembly Speaker, raise concerns.
- **Contradiction with the Rule of Law:** The absolute freedom of speech granted to parliamentarians seemingly places them above citizens, a point of contention with our democratic principles.
- **Threat to Equality:** Granting special rights and immunities to parliamentarians is seen as undermining equality.
- **Immunity from Court Review:** The most controversial aspect is the power and jurisdiction of courts to review parliamentary privileges.
- **Global Experience:** Countries like Britain, the US, and Australia have either limited these privileges or codified them.

Balancing Free Speech and Parliamentary Privileges:

- **The Paradox:** The privileges, essential for the independent functioning of Parliament, often come into conflict with free speech, resulting in a paradoxical situation.
- **Judicial Stance:** The Supreme Court initially gave primacy to privileges over free speech in M.S.M. Sharma (1958) but reconsidered this stance by 1967.

Way Forward:

- **Codification:** Codification of privileges would enhance the accountability of legislatures and open them to judicial scrutiny.
- **Learning from Global Examples:** The codification practiced by Australia, the USA, New Zealand, and Canada can serve as potential models for India.

IGNITE YOUR MIND

A recent study shows that state legislatures are experiencing chronic absenteeism with some assemblies being in session for less than 50 days in a year. This affects democracy at the state level. Why do you think this happens? How can we make sure that legislatures work regularly? Should all states have a law that sets a minimum number of days for the assembly to work?

CONCLUSION

- State Legislatures in India are not just law-making bodies at the state level but are crucial for maintaining the balance of power, representing regional interests, and ensuring the effective governance of India's diverse and populous states within the federal structure of the Constitution. Their role is pivotal in the decentralization of power, allowing for more localized and efficient governance while simultaneously contributing to the unity and integrity of the nation.

Supreme Court

21

HISTORICAL BACKGROUND

The promulgation of the **Regulating Act of 1773** by the King of England paved the way for establishment of the **Supreme Court** of Judicature at **Calcutta in 1774.** The Supreme Courts **at Madras (1800)** and **Bombay (1823)** were established by **King George – III.**

The **India High Courts Act, 1861** was enacted to create High Courts for various provinces and abolished **Supreme Courts** at **Calcutta, Madras and Bombay** and also the Sadar Adalats in Presidency towns. These High Courts had the distinction of being the highest Courts for all cases till the creation of the Federal Court of India under the **Government of India Act, 1935**. The **Federal Court** had jurisdiction to **solve disputes between provinces** and federal states and hear appeals against judgements from High Courts. The Supreme Court of India held its first sitting on **28 January 1950.**

INDIAN JUDICIAL SYSTEM

The Constitution of India envisages **a single system** of courts that enforces both Central laws as well as state laws. It is an **integrated judicial system** with the **Supreme Court at the top** and **the High Courts below it**. Under a High Court, there is a hierarchy of subordinate courts, i.e. district courts and other lower courts.

In **Part V** of the Constitution, **Articles 124 to 147** deals with the organisation, independence, jurisdiction, powers, procedures for the Supreme Court. The Parliament is also authorised to regulate them.

There is a **double system of courts** in the USA i.e. **one for the centre** and the **other for the states.**

The federal laws are enforced by the federal judiciary while the state laws are enforced by the state judiciary.

COMPOSITION AND APPOINTMENT OF JUDGES

Composition of Judges

Article 124 (1): *There shall be a Supreme Court of India constituting of a Chief Justice of India and, until* ***Parliament by law*** *prescribes a larger number, of not more than seven other Judges*

- **Currently**, the Supreme Court consists of **thirty-four judges** (one Chief Justice and thirty-three other judges) **Originally**, the strength of the Supreme Court was fixed at **eight.** The Parliament increased this number of other judges progressively to ten in 1956, to thirteen in 1960, to seventeen in 1977, to twenty-five in 1986, to thirty in 2008 and thirty-three in 2019.

Appointment of Judges

Article 124 (2): *Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after* ***consultation*** *with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose and shall hold office until he attains the age of sixty five years.*

- (2A) The age of a Judge of the Supreme Court shall be determined by such authority and in such manner as Parliament may by law provide.

Chief justice →	• Is appointed by the President after consultation with such judges of the Supreme Court and high courts as he deems necessary.
Other judges →	• Appointed by President after consultation with the chief justice and such other judges of the Supreme Court and the high courts as he deems necessary.

Evolution of Collegium System:

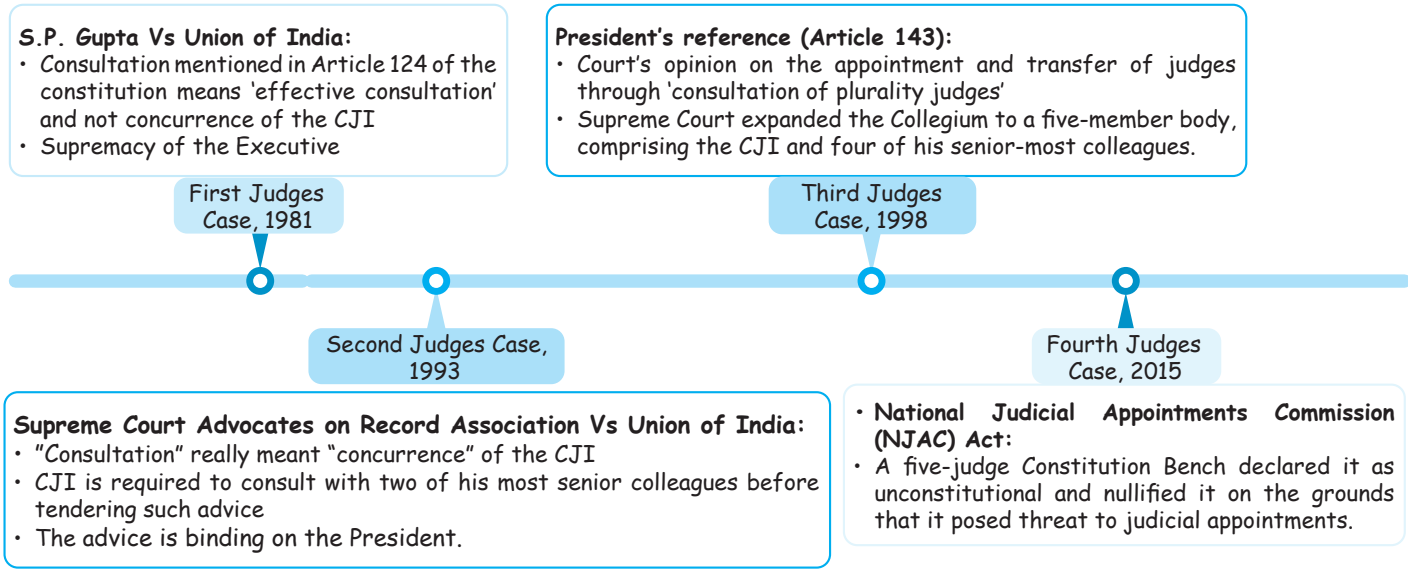

S.P. Gupta Vs Union of India:
• Consultation mentioned in Article 124 of the constitution means 'effective consultation' and not concurrence of the CJI
• Supremacy of the Executive
First Judges Case, 1981
Second Judges Case, 1993
Supreme Court Advocates on Record Association Vs Union of India:
• "Consultation" really meant "concurrence" of the CJI
• CJI is required to consult with two of his most senior colleagues before tendering such advice
• The advice is binding on the President.
President's reference (Article 143):
• Court's opinion on the appointment and transfer of judges through 'consultation of plurality judges'
• Supreme Court expanded the Collegium to a five-member body, comprising the CJI and four of his senior-most colleagues.
Third Judges Case, 1998
Fourth Judges Case, 2015
• National Judicial Appointments Commission (NJAC) Act:
• A five-judge Constitution Bench declared it as unconstitutional and nullified it on the grounds that it posed threat to judicial appointments.

Fig. 21.2: Evolution of Collegium System

Present Scenario:

The process for appointing judges to the Supreme Court of India involves the following key steps:

Initiation of the Process:

- **Vacancies:** When a position of a judge in the Supreme Court is about to become vacant or is vacant, the Chief Justice of India (CJI) initiates the process.

Recommendations by the Collegium:

- **Collegium System:** Recommendations for judicial appointments are made by the Collegium, which comprises the **CJI and a group of four senior most judges** of the Supreme Court.
- **Consultation:** The Collegium consults among its members and considers the names of judges from high courts or lawyers who are eligible for elevation to the Supreme Court.

Opinion of the Chief Justice of India:

- The CJI's opinion holds significant weight in the Collegium's decision-making process.

Review by the Collegium:

- The Collegium reviews the suitability and merit of the candidates and may reconsider the names proposed for appointment.

Consultation with the Central Government:

- Once the Collegium finalises its recommendations, it sends the names to the central government for consultation.
- The government can express any concerns or seek clarification on the recommended names, but it is **not binding on the Collegium.**

President's Approval:

- After considering the recommendations and any inputs from the government, the President of India gives the final approval for the appointments.

Issuance of Warrants:

- Upon receiving the President's approval, the Chief Justice of India issues warrants of appointment.

Swearing-In Ceremony:

- The newly appointed judge is then sworn in and officially assumes office.

It's important to note that the process of judicial appointments has evolved over time, and the Collegium system has been a subject of debate and discussions. The Collegium system has been criticised for lacking transparency and accountability, leading to various proposals for reforms in the appointment process.

IGNITE YOUR MIND

The State comprises of three branches i.e. legislative, executive, and judiciary- that have separate powers and duties to avoid interference. How do the higher courts uphold this separation of powers in India? Can you give examples of cases where the Court has protected this principle?

MoP starts by the recommendation of the Supreme Court Collegium to the Centre for the appointment of other judges. The Chief Justice of India heads the collegium.

Once the center receives recommendations, it asks for the opinion of state governments and the input from the Intelligence Bureau (IB).

The government then forwards the files, along with the IB inputs to the Supreme Court collegium.

If the Supreme Court collegium clears the names, the files return to the central government. It then either notifies the appointments or sends them back with objections or its views.

At this stage, the Supreme court collegium can seek additional inputs on the government's opinion. Accordingly, it can either reject or reiterate the proposal.

If the collegium reiterates its decision, then, under the MoP, the government is bound to notify the appointments.

However, the MoP does not specify a time-frame for the central government to act on a collegium decision.

QUALIFICATIONS, OATH AND SALARIES

Qualifications of Judges

Article 124(3): *A person shall not be qualified for appointment as a Judge of the Supreme Court unless he is a citizen of India and-*

*(a) Has been for at least **five years a Judge of a High Court** or of two or more such Courts in succession; or*

*(b) Has been for at least **ten years an advocate of a High Court** or of two or more such Courts in succession; or*

*(c) Is, in the opinion of the President, **a distinguished jurist**.*

The **Constitution** has **not** prescribed a **minimum age** for **appointment** as a **judge** of the Supreme Court.

Oath or Affirmation

As per **Third Schedule** of the Constitution a person appointed as a judge of the Supreme Court has to take an oath or affirmation **before the President,** or some person appointed by him.

In his oath, a judge of the Supreme Court swears:

(a) To bear true faith and allegiance to the Constitution of India;

(b) To uphold the sovereignty and integrity of India;

(c) To duly and faithfully and to the best of his ability, knowledge and judgement perform the duties of the Office without fear or favour, affection or ill-will and

(d) To uphold the Constitution and the laws.

Salaries and Allowances

Article 125:

(1) There shall be paid to the Judges of the Supreme Court such salaries as may be determined by Parliament by law and, until provision in that behalf is so made, such salaries as are specified in the Second Schedule.

(2) Every Judge shall be entitled to such privileges and allowances and to such rights in respect of leave of absence and pension as may from time to time be determined by or under law made by Parliament and, until so determined, to such privileges, allowances and rights as are specified in the Second Schedule:

- The salaries, allowances, privileges, leave and pension of the judges of the Supreme Court are determined from time to time by the Parliament.
- This expenditure forms part of charged expenditure on Budget i.e. not votable by the Parliament.
- Parliament in this regard made a law called, **The Supreme Court judges (Salaries, and Conditions of Services) Act, 1958**.
- They **cannot be varied to their disadvantage** after their appointment except **during a financial emergency.**
- They are also paid a sumptuary allowance and provided with free accommodation and other facilities.
- The **retired Chief Justice** and **judges** are entitled to **50% of their last drawn salary as monthly pension.**
- They are also paid a sumptuary allowance (a benefit granted to several grades of Central Government employees to cover the expenses incurred on entertaining visitors) and provided with free accommodation and other facilities.

TENURE AND REMOVAL

Tenure of Judges

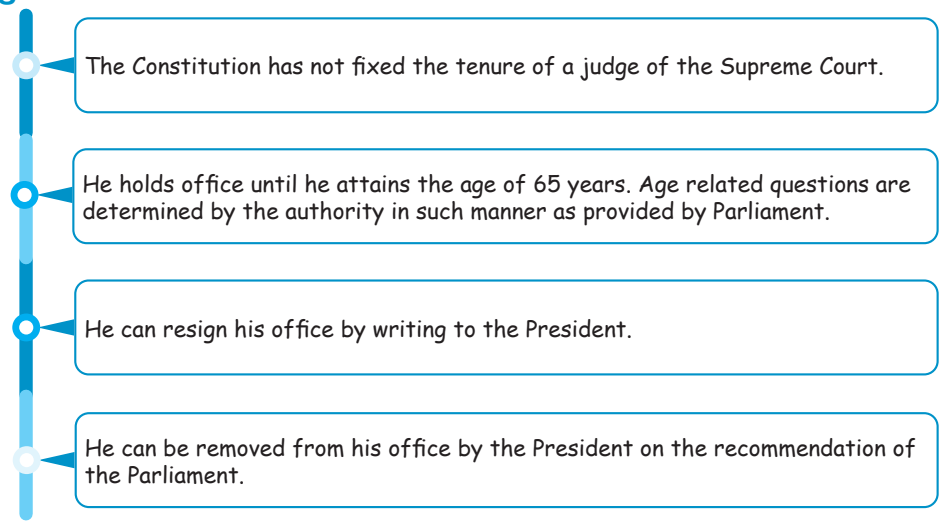

The Constitution has not fixed the tenure of a judge of the Supreme Court.
He holds office until he attains the age of 65 years. Age related questions are determined by the authority in such manner as provided by Parliament.
He can resign his office by writing to the President.
He can be removed from his office by the President on the recommendation of the Parliament.

Fig. 21.3: Tenure of Judges

Removal of Judges (Article 124 (4) & (5):

The Judge of the Supreme Court can be removed from his Office by an order of the President. The President Issues the removal order only after an address by Parliament has been presented to him in the same session for such removal. This address must be supported by a **special majority** of **each House of Parliament**.

- A majority of the total membership of that House and
- A majority of not less than two-thirds of the members of that House present and voting.

The grounds for removal are two– **proved misbehaviour or incapacity.**

The Judges Enquiry Act (1968) regulates the procedure relating to the removal of a judge of the Supreme Court by the process of impeachment:

Initiation of Impeachment:

- The process for the removal of a judge begins with the initiation of removal motion.

Notice of Motion:

- A notice of motion for the removal of a judge is required to be presented in either house of Parliament—Lok Sabha (House of the People) or Rajya Sabha (Council of States).

Signatories:

- The notice of motion must be signed by either 100 members of Lok Sabha or 50 members of Rajya Sabha.

Constitution of Investigative Committee:

- After the notice is submitted, the Chairman of Rajya Sabha or the Speaker of Lok Sabha can either admit the notice or reject it.
- Once admitted, the Chairman or the Speaker constitutes a three-member committee to investigate the charges against the judge.
- The committee typically consists of the -
  - (i) Chief Justice of India or a judge of the Supreme Court,
  - (ii) A Chief Justice of a High Court, and
  - (iii) A distinguished jurist.

Investigation and Report:

- The committee conducts a thorough investigation into the charges presented in the notice of motion.
- The committee submits its findings and a report to the Speaker of Lok Sabha or the Chairman of Rajya Sabha, depending on the house where the motion was initiated.

Parliamentary Approval:

- The motion for removal is then taken up for consideration in the house where it was initiated.
- For the motion to be successful, it must be supported by a special majority, which means a majority of the total membership of that house and a majority of at least two-thirds of the members present and voting.

President's Approval:

- If the motion is passed by the house, it is presented to the President for approval.
- The President's assent is required for the removal to take effect.

It's crucial to note that the removal process is a safeguard to ensure judicial independence and protect judges from arbitrary removal. The process involves a thorough investigation and requires significant political consensus to prevent misuse of the removal mechanism.

Note: The first case of impeachment is that of Justice V. Ramaswami of the Supreme Court (1991–1993) but he could not be removed as the Congress Party abstained from voting.

ACTING, AD-HOC AND RETIRED JUDGES

Appointment of Acting Chief Justice (Article 126)

The President appoints a judge of the Supreme Court as an acting Chief Justice of India when

- The office of Chief Justice of India is vacant or
- When the Chief Justice is, by reason of absence or otherwise, unable to perform the duties of his office,

Note: India's 50th Chief Justice DY Chandrachud is among the 50 Chief Justices that the country has had since its Independence

Appointment of Ad hoc Judge (Article 127)

If there is a lack of quorum in the Supreme Court for permanent judges to hold or continue any session, then the Chief Justice of India can appoint a judge of a High Court as an ad hoc judge of the Supreme Court for a **temporary period.** He does this only after consultation with the Chief Justice of the High Court concerned and with the previous consent of the President.

Qualification- The judge so appointed should be qualified for appointment as a judge of the Supreme Court.

Duties and Power:

- It is the duty of the judge so appointed to attend the sittings of the Supreme Court, in priority to other duties of his office.
- While attending as an Ad hoc Judge he enjoys all the jurisdiction, powers and privileges of a judge of the Supreme Court.

Attendance of Retired Judge (Article 128)

The Chief Justice of India (CJI) can request a **retired judge of the Supreme Court** or a retired judge of a High Court to act as a judge of the Supreme Court for a **temporary period,** who is duly qualified for appointment as a judge of the Supreme Court. Such a judge is entitled to such allowances as the President may determine.

Procedure: The CJI can do so only with the prior consent of the President and also of the person who is to be so appointed.

Powers and Privileges: He will also enjoy all the jurisdiction, powers and privileges of a judge of the Supreme Court.

SEAT AND PROCEDURE OF SUPREME COURT

Seat of Supreme Court (Article 130)

As per **Article 130**, Delhi is the location of the Supreme Court, but the Chief Justice of India can also choose other places as its seat. However, he or she needs the prior approval of the President for this. This is an optional provision and not a mandatory one.

Procedure of the Court

- The Supreme Court can **make rules** for regulating practice and procedure of the Court **with the approval of the President.**
- The **Constitutional cases** or references **made by the President** under **Article 143** are decided by a Bench consisting of at **least five judges**.
- Rest of other cases are decided by **single judges** and division benches by majority vote but if differing, then judges can give dissenting judgements.

INDEPENDENCE OF SUPREME COURT

The Supreme Court has a very significant role in the Indian democratic political system due to its nature of the **highest court of appeal, the guarantor** of the **fundamental rights of the citizens** and **guardian of the Constitution.** It is free from the encroachments, pressures and interferences of the executive and the Legislature. It has been allowed to do justice without fear or favour.

The Constitution has made the following provisions to safeguard and ensure the independent and impartial functioning of the Supreme Court:

Mode of Appointment	❑ The judges of the Supreme Court are appointed by the President in consultation with the members of the judiciary, which curtails the absolute discretion of the executive. ❑ It also ensures that the judicial appointments are not based on any political considerations.
Security of Tenure	❑ They can be only removed from office by the President in the manner mentioned in the Constitution [Article 124(4)]. ❑ Judges of the Supreme Court do not hold their office during the pleasure of the President, though they are appointed by him. ❑ So far, **no Judge of the Supreme Court** has been **removed**.

Fixed Service Conditions	❑ The salaries, allowances, privileges, leave and pension of the judges of the Supreme Court are determined by the Parliament. [Article 125(2)] ❑ The conditions of service for the judges of the Supreme Court remain the same during their term of Office **except during a Financial Emergency [Article 360(4)(b)].**
Expenses Charged on Consolidated Fund	❑ The salaries, allowances, pensions and administrative expenses of the Supreme Court are **charged on the Consolidated Fund of India**. [Article 146(3)] ❑ Thus, they are non-votable by the Parliament.
Conduct of Judges cannot be Discussed	❑ The Constitution prohibits discussion in Parliament and also State Legislature for the conduct of the judges of the Supreme Court in the discharge of their duties, except when an impeachment motion is under consideration of the Parliament. [Article 121]
Ban on Practice after Retirement	❑ The retired judges of the Supreme Court are prohibited to plead or act in any Court within the territory of India. [Article 124(7)]. ❑ This ensures that they do not favour any one in the hope of future favour.
Power to Punish for its Contempt	❑ To uphold its authority, dignity and honour, the Supreme Court has the power to punish anyone who disrespects it. This is called the power of contempt.
Freedom to Appoint its Staff	❑ The CJI can appoint officers and servants of the Supreme Court without any interference from the executive. ❑ He can also prescribe their conditions of services.
Its Jurisdiction cannot be Curtailed	❑ The Parliament is not authorised to curtail the jurisdiction and powers of the Supreme Court. ❑ The Constitution has guaranteed to the Supreme Court jurisdiction of various kinds.
Separation from Executive	❑ The Constitution directs the State to take steps to separate the Judiciary from the Executive in the public services **(Article 50**). ❑ This means that the executive authorities should not possess the judicial powers.

JURISDICTION AND POWERS OF THE SUPREME COURT

The Constitution confers a very extensive jurisdiction and powers to the Supreme Court which is similar to a Federal Court of the USA. It also acts as a final court of appeal like the British House of Lords. It is the final interpreter and guardian of the Constitution and also as a guarantor of the fundamental rights of the citizens. Further, it also has advisory and supervisory powers.

The jurisdiction and powers of the Supreme Court can be classified into the following:

- ❑ Original Jurisdiction.
- ❑ Writ Jurisdiction.
- ❑ Appellate Jurisdiction.
- ❑ Advisory Jurisdiction.
- ❑ A Court of Record.
- ❑ Power of Judicial Review.
- ❑ Enlargement of the Supreme Court's power.
- ❑ Binding Nature of the Supreme Court' decision.
- ❑ Enforcement of decrees and orders of the Supreme Court.
- ❑ Constitutional Interpretation.
- ❑ Other Powers.

Original Jurisdiction (Article 131)

The Supreme Court decides the disputes between different units of the Indian Federation.

(a) Between the Centre and one or more states.

(b) Between the Centre and any state or states on one side and one or more other states on the other side.

(c) Between two or more states.

For federal disputes, the Supreme Court has exclusive original jurisdiction.

- ❑ **Exclusive means** no other court can decide such disputes and
- ❑ **Original means,** the power to hear such disputes in the first instance, and not by way of appeal.

In case of the exclusive original jurisdiction of the Supreme Court, two points should be noted.

- ❑ First, the dispute must involve a question of whether of law or fact, therefore, the questions of political nature are excluded from it.
- ❑ Second, any suit brought before the Supreme Court by a private citizen against the Centre or a state cannot be entertained.

Further, this jurisdiction of the Supreme Court **does not extend** for:

- A dispute arising out of any pre-Constitution treaty, agreement, covenant, engagement.
- A dispute arising out of any treaty, agreement, etc., which specifically provides that the said jurisdiction does not extend to such a dispute.
- Inter-state water disputes.
- Matters referred to the Finance Commission.
- Adjustment of certain expenses and pensions between the Centre and the states.
- Ordinary dispute of a Commercial nature between the Centre and the states.
- Recovery of damages by a state against the Centre.

Events

- The first suit was brought by West Bengal under the original jurisdiction of the Supreme Court in 1961, against the Centre.
- The State Government challenged the Coal Bearing Areas (Acquisition and Development) Act, 1957, which was passed by the Parliament. However, the Supreme Court dismissed the suit by upholding the validity of the Act.

Writ Jurisdiction (Article 32)

The Supreme Court is empowered to issue writs including **habeas corpus, mandamus, prohibition, quo- warranto and certiorari** for the **enforcement** of the **fundamental rights** of an aggrieved citizen.

The Supreme Court in this regard has original jurisdiction in the sense that an aggrieved citizen can directly go to the Supreme Court, and not necessarily by way of appeal.

However, the writ jurisdiction of the Supreme Court is not exclusive. It means that when the Fundamental Rights of a citizen are violated, the aggrieved party has the option of moving either the High Court or the Supreme Court directly.

Therefore, the original jurisdiction of the Supreme Court with regard to federal disputes is different from its original jurisdiction with regard to disputes relating to fundamental rights.

- In the **first case** - it is exclusive where the parties involved are units of federation.
- In the **second case** - it is between a citizen and the Government (Central or state).

The Supreme Court can issue writs **only for the enforcement of the Fundamental Rights** and not for other purposes. On the other hand, the High Court can issue writs not only for the enforcement of fundamental rights but also for other purposes. It means that the **writ jurisdiction of the High Court is wider than that of the Supreme Court.** But, the **Parliament** can confer power on the Supreme Court to issue writs for **other purposes also.**

The writs that the Supreme Court can issue under Article 32 are as follows:

- **Habeas Corpus:** This writ is issued to protect the personal liberty of individuals. It directs the authority detaining a person to produce the detainee before the court, along with the reasons for the detention.
- **Mandamus:** Mandamus is issued to public officials or lower courts to compel them to perform their official duties. It is a direction from the Supreme Court to do a particular act or refrain from doing something.
- **Prohibition:** Prohibition is issued by the Supreme Court to lower courts or tribunals to prevent them from exceeding their jurisdiction or acting contrary to the principles of natural justice.
- **Certiorari:** Certiorari is issued to quash the orders or decisions of lower courts, tribunals, or quasi-judicial authorities if they are found to be without jurisdiction or in excess of their jurisdiction.
- **Quo Warranto:** Quo warranto, meaning "by what authority," is issued to inquire into the legality of a person holding a public office and the authority under which they claim to hold that office.

Appellate Jurisdiction

The Supreme Court is primarily a court of appeal and hears appeals against the judgments of the lower courts.

It enjoys a wide appellate jurisdiction which can be classified under four heads:

- Appeals in **constitutional** matters
- Appeals in **civil** matters
- Appeals in **criminal** matters
- Appeals by **special** leave

(a) Constitutional Matters (Article 132)

An appeal can be made to the Supreme Court against the judgement of a High Court if the High Court certifies that the case involves a substantial question of law that requires the interpretation of the Constitution.

(b) Civil Matters (Article 133)

An appeal lies to the Supreme Court from any judgement of a High Court if the High Court certifies–

- The case involves a substantial question of law of general importance.
- The question needs to be decided by the Supreme Court.

(c) Criminal Matters (Article 134)

The Supreme Court hears appeals against the judgement in a criminal proceeding of a High Court if the High Court:

- Has on appeal reversed an order of acquittal of an accused person and sentenced him to death.
- Has taken before itself any case from any subordinate court convicted the accused person and sentenced him to death.
- Certifies that the case is a fit for appeal to the Supreme Court.

For the first two cases, an appeal lies to the Supreme Court as a matter of right (ie, without any certificate of the high court). But if the High Court has reversed the order of conviction and has ordered the acquittal of the accused, there is no right to appeal to the Supreme Court.

Further, the appellate jurisdiction of the Supreme Court extends to all civil and criminal cases in which the Federal Court of India had jurisdiction to hear appeals from the High Court but which are not covered under the civil and criminal appellate jurisdiction of the Supreme Court mentioned above.

(d) Appeal by Special Leave (Article 136)

The Supreme Court is authorised to grant in its discretion special leave to appeal from any judgement in any matter passed by any court or tribunal in the country (except military tribunal and court-martial).

This provision contains four aspects as under:

- It is a discretionary power and hence, cannot be claimed as a matter of right.
- It can be granted in any judgement whether final or interlocutory.
- It may be related to any matter–constitutional, civil, criminal, income-tax, labour, revenue, advocates, etc.
- It can be granted against any court or tribunal and not necessarily against a High Court (of course, except a military court).

This provision gives the Supreme Court a broad jurisdiction to hear appeals. The Supreme Court itself said that this power is extraordinary and exceptional, and it should be used carefully and rarely, only in special situations. There is no fixed rule or formula to limit the use of this power.

Advisory Jurisdiction

As per **(Article 143)** of the Constitution it authorises the President to seek the opinion of the Supreme Court in the two categories of matters:

- On any question of law or fact of public importance which has arisen or which is likely to arise:- Here, the Supreme Court may tender or may refuse to tender its opinion to the President.
- On any dispute arising out of any pre-Constitution treaty, agreement, covenant, engagement:- Here, the Supreme Court 'must' tender its opinion to the President

In both these cases, the Supreme Court's opinion is only advisory and not a judicial pronouncement. Therefore, it is not binding upon the President and may follow or may not follow the opinion. But, it facilitates the government to have an authoritative legal opinion on a matter to be decided by it.

Till now, the President has made several references to the Supreme Court under its advisory jurisdiction (also known as consultative jurisdiction) which we can see below:

- Delhi Laws Act in 1951.
- Berubari Union in 1960.
- Sea Customs Act of 1963.
- Keshav Singh's case relating to the privileges of the Legislature in 1964.
- Presidential Election in 1974.
- Jammu and Kashmir Resettlement Act in 1982.
- Cauvery Water Disputes Tribunal in 1992.
- Rama Janma Bhumi case in 1993.
- The consultation process to be adopted by the Chief Justice of India in 1998.
- Legislative competence of the Centre and States on natural gas and liquefied natural gas in 2001.
- Constitutional validity of the Election Commission's decision on deferring the Gujarat Assembly Elections (2002).
- Punjab Termination of Agreements Act in 2004.
- 2G spectrum case verdict.

Court of Record (Article 129)

The Supreme Court has two powers when having power of a Court of Record

- The judgements, proceedings and acts of the Supreme Court are recorded for perpetual memory and testimony and are admitted to be of evidentiary value and cannot be questioned when produced before any court. It is also recognised as a legal precedent and legal reference.
- It has the power to punish for contempt of court, either with simple imprisonment for a term up to six months or with a fine up to ₹2,000 or with both. In 1991, the Supreme Court held that it has the power to punish for contempt not only of itself but also for other Courts - high courts, subordinate courts and tribunals functioning in the entire country.

Contempt of court may be civil or criminal. It means wilful disobedience to any judgement order of a court or wilful breach of an undertaking given to a court.

- **Civil contempt** means wilful disobedience to any judgement, order, writ or other process of a court.
- **Criminal contempt** means the publication of any matter or doing an act which,
  - Scandalises or lowers the authority of a court;
  - Prejudices or interferes with the due course of a judicial proceeding;
  - Interferes or obstructs the administration of justice in any other manner.

Also innocent publication and distribution of some matter, fair and reasonable criticism of judicial acts and comment on the administrative side of the judiciary **do not amount to contempt of court.**

Power of Judicial Review (Article 137)

This term denotes the power of the Supreme Court to examine the constitutionality of legislative enactments and executive orders of not only the Central but also state governments. If it is found that if it violates the Constitution (ultra-vires) then it can be declared as illegal, unconstitutional and invalid by the Supreme Court. Consequently, they cannot be enforced by the Government. Also the Supreme Court shall have power to review any judgement pronounced or order made by it.

- **Curative Petition:** SupremeCourt conceived the idea in **Rupa Hurra v/s Ashok Hurra** case. It is used when the review petition is dismissed or exhausted.

Enlargement of Powers of the Supreme Court

- **Enlargement of the jurisdiction of the Supreme Court (Article 138)**
  - The Supreme Court shall have further jurisdiction and powers with respect to any matters in the Union List as Parliament may by law confer.
  - It shall have further jurisdiction and powers if Parliament by law provides it with respect to any matters as the Government of India and any other state government by special agreement.
- **Conferment on the Supreme Court of powers to issue certain writs (Article 139)**
  - This provision states that the Parliament may by law confer on the Supreme Court power to issue directions, orders or writs, including writs in the nature of *habeas corpus, mandamus, prohibition or quo-warranto* as well as *certiorari* or amongst any of the above writs mentioned in Article 32 for any purposes.
- **Transfer of certain cases (Article 139A)**
  - It states that when there are cases which involves the substantial questions of law and which are pending before the Supreme Court and one or more High Courts or before two or more High Courts.
  - Then, if the Supreme Court is satisfied on its own motion or on an application made by the Attorney-General of India or by a party to any such case that such questions are substantial questions of general importance.
  - The Supreme Court may also withdraw the cases which are pending before the High Court or the High Courts and dispose of all the cases itself.
  - The Supreme Court also deems that if it is expedient for doing justice then transfer any case, appeal or other proceedings pending before any High Court to any other High Court.

Binding Nature of the Supreme Court's decision (Article 141)

- It states that law declared by the Supreme Court is to be binding on all courts within the territory of India.

Enforcement of decrees and orders of Supreme Court (Article 142)

- The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India
- Also the Supreme Court has the power to secure the attendance of any person as well as discovery of any judgements.
- However, above powers are subject to any laws made by the Parliament

Constitutional Interpretation

The Supreme Court is the ultimate interpreter of the Constitution which articulates and shapes the final version to the spirit and content of the provisions of the Constitution. While interpreting the Constitution, the Supreme Court applies various doctrines in interpreting the Constitution. Some of the important doctrines mentioned below are:

Doctrines	Features
Doctrine of Severability	❑ It means that when some particular provision of a statute offends or seems to be against a constitutional limitation, then that offending provision will be declared void by the Court and not the entire statute.
Doctrine of Waiver	❑ It states that a person can intentionally give up his right or privilege and is not able to exercise his rights which are conferred on him by the state
Doctrine of Eclipse	❑ It states that any law becomes inconsistent with fundamental rights and it is not invalid also at the same time it is not dead but overshadowed by the fundamental right.
Doctrine of Territorial Nexus	❑ It states that laws made by a state legislature are not applicable outside the state, except when there is a sufficient nexus between state and object.
Doctrine of Pith and Substance	❑ The legislation does not become illegal only because it affects a matter outside a legislature's purview if the substance of the legislation is within that body's legal jurisdiction. ❑ The Doctrine of Pith and Substance originated in Canada through a case named Cushing v. Dupuy. ❑ It is legalised by Article 246 and Schedule 7 under the Indian Constitution.
Doctrine of Colourable Legislation	❑ It implies that whatever is prohibited directly is prohibited indirectly also. ❑ It aims at the prevention of excessive and unconstitutional use of the legislative authority of the government.
Doctrine of Incidental and Ancillary Powers	❑ It is applied where there is a need for the government to pass laws for the benefit of the country and people, that is not expressly stated in the Constitution or any other legislation
Doctrine of Precedent	❑ It is a principle of following previous decisions of the Court within its well-defined limits
Doctrine of Occupied Field	❑ It provides that if an Act of Parliament is occupying a subject over which the State Legislature is also empowered to legislate and has legislated and the State's legislation obstructs the operation of the Parliament's Act then the State's legislation is repugnant or inconsistent with the Act.
Doctrine of Prospective Overruling	❑ This concept originated in the American Judicial System. ❑ It says that a decision made in a particular case would have operation only in the future and will not carry any retrospective effect on any past decisions. ❑ It was first invoked in India in the case of ***Golak Nath v. the State of Punjab*** by Chief Justice Kokka Subba Rao.
Doctrine of Harmonious Construction	❑ There is a provision of the statute which should not be interpreted in isolation but as a whole, so as to remove any inconsistency or repugnancy.
The Doctrine of Liberal Interpretation	❑ The Constitution must be interpreted in a broad and liberal manner and not in a narrow sense.

Other Powers

The Supreme Court has numerous other powers:

- ❑ It has the original, exclusive, and final authority- where it decides the disputes regarding the election of the President and the Vice President.
- ❑ It enquires about the behavioural conduct of the chairman and members of the Union Public Service Commission on a reference made by the President, and if any member is found guilty of misbehaviour, then the advice tendered by the Supreme Court in this regard is binding on the President.
- ❑ It is not bound by its previous decision and can depart from it in the interest of justice or community welfare and act as a self-correcting agency.
  - For example, in the ***Kesavananda Bharati case (1973),*** the Supreme Court departed from its previous judgment in the ***Golak Nath case (1967)***.
- ❑ As per **Article 145,** the Supreme Court from time to time with the approval of the President make rules for regulating the practice and procedure of the Court which include:
  - ❒ Rules to the persons practising before the Court.
  - ❒ Rules to the procedure for hearing appeals.

- Rules for the proceedings in the Court for the enforcement of any of the rights.
- Rules to the proceedings in the Court under Article 139A.
- Rules to the entertainment of appeals.
- Rules to the costs and incidental to any proceedings in the Court.
- Rules to the granting of bail.
- Rules to stay of proceedings.

- It fixes the number of judges who will sit to decide any substantial question of law or interpretation of the Constitution or for any purpose for the power of single judges and district judges.

SUPREME COURT ADVOCATES

The Supreme Court has three categories of Advocates to practise law and they are as follows:

- Senior Advocates
- Advocates-on-Record
- Other Advocates

Senior Advocates

- They are designated as Senior Advocates by the Supreme Court of India or by any High Court.
- The Court designates any advocate as Senior Advocate if in its opinion by virtue of his ability, standing at the Bar or special knowledge or experience in law.
- He/she is not entitled to appear without an Advocate-on-Record in the Supreme Court or any other court or tribunal in India.
- He/she is also not entitled to accept instructions to draw pleadings or affidavits, advice on evidence or do any drafting work.
- But this prohibition shall not extend to settling any such matter as aforesaid in consultation with a junior.

Advocates-on-Record

- Only these advocates are entitled to file any matter before the Supreme Court.
- They can also file an appearance or act for a party in the Supreme Court.

Other Advocates

- These are advocates whose names are entered on the roll of any State Bar Council under the **Advocates Act, 1961.**
- They can appear and argue any matter on behalf of a party in the Supreme Court.
- But they are not entitled to file any document or matter before the Court.

CONCLUSION

The Supreme Court of India stands as the guardian of justice, equality, and the rule of law, playing a pivotal role in interpreting the Constitution and safeguarding the rights of citizens. Over the years, it has evolved into a bastion of judicial independence and integrity, delivering landmark judgments that have shaped the legal landscape of the country. Through its activism and commitment to justice, the Supreme Court has upheld the principles of democracy and ensured accountability among the pillars of governance. As the apex court, it continues to inspire trust and confidence, serving as a beacon of hope for millions seeking justice and equality under the law.

High Court

22

INTRODUCTION

In the Indian Judiciary, the High Court works as a single integrated judicial system that operates below the Supreme Court but above the subordinate courts, such as District or Session Courts. For most of the states, it consists of a High Court and a hierarchy of subordinate courts. It occupies the top position in the judicial administration of a state.

Background

The High Court system originated in India in 1862 by the **Indian High Court Act, 1861,** and set up High Courts at Calcutta, Bombay, and Madras. Further, in 1866, a fourth High Court was established at Allahabad. Later, with due course of time, each province in British India came to have its own High Court.

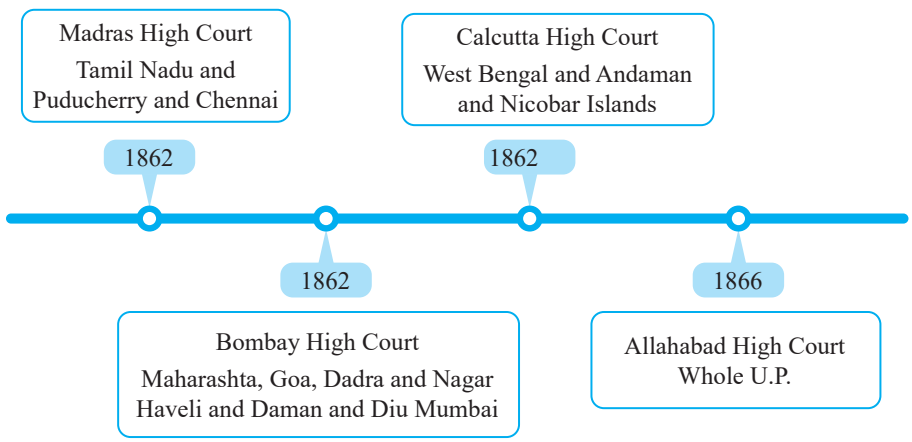


Fig. 22.1: Origin of High Courts in India

After Independence, the High Court which existed in a province became the High Court for the corresponding state. The Indian Constitution provides for a High Court for each state, but after the **Seventh Amendment Act of 1956,** it authorised the Parliament to establish **a common High Court for two or more states or for two or more states and a union territory.** The territorial jurisdiction of a High Court is co-terminus with the territory of the concerned state. Also, if it has a common High Court then it is co-terminus with the territories of the concerned states and union territory.

CONSTITUTIONAL PROVISIONS

Articles 214 to 231 in Part VI of the Constitution deal with the organisation, independence, jurisdiction, powers, procedures, and so on of the High Courts.

- **Article 214:** It states that there shall be a High Court for each State.
  - However, **at present (2023)** there are 25 High Courts in the country. Out of that, only three High Courts have jurisdiction over more than one state.
- **Article 231:** The Parliament is authorised to establish a common High Court for two or more States.
  - This provision was added to the Constitution through the 7th Amendment Act of 1956.
- **Article 230:** It states that the Parliament may by law extend the jurisdiction of a High Court to, or exclude the jurisdiction of a High Court from, any Union territory.
  - Among the nine union territories, Delhi alone has a separate High Court (since 1966) and other union territories such as Jammu and Kashmir and Ladakh have a common High Court.
  - Rest of other union territories fall under the jurisdiction of different state High Courts.
- **Article 215:** Every High Court shall be a court of record and shall have all the powers of such a court, including the power to punish for contempt of itself.
- **Article 216**: Every High Court shall consist of a Chief Justice and such other Judges as the President may from time to time, deem fit and necessary for appointing.

The Parliament can extend the jurisdiction of a High Court to any union territory or exclude the jurisdiction of a High Court from any union territory.

COMPOSITION AND APPOINTMENT

Every High Court consists of a Chief Justice and such other judges as the President seems necessary from time to time to appoint. The Constitution does not specify the strength of

a High Court and leaves it to the discretion of the President. Therefore, the President determines the strength of a High Court from time to time depending upon its requirement.

Appointment and conditions of Judges (Article 217)

Article 217 (1): Every Judge of a High Court shall be appointed by the President by warrant under his hand and seal after consultation with the Chief Justice of India, the Governor of the State, and, in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High court, and shall hold office, in the case of an additional or acting Judge, as provided in Article 224, and in any other case, until he attains the age of sixty two years.

- The **Supreme Court** declared in the **Second Judges case** (1993) that the chief justice of India's opinion is mandatory for the appointment of a judge of the high court. The Supreme Court further clarified in the **Third Judges case** (1998) that the chief justice of India should consult with two senior-most judges of the Supreme Court for the appointment of high court judges. Therefore, the 'consultation' process does not mean the sole opinion of the chief justice of India.

Appointment system of High Court Judges:

- MoP starts with the recommendation of the High Court Collegium to the center for the appointment of other judges. The Chief Justice of the High Court(HC) heads the collegium.
- Once the center receives recommendations, it asks for the opinion of state governments and the input from the Intelligence Bureau (IB).
- The government then forwards the files, along with the IB inputs to the Supreme Court collegium.
- If the Supreme Court collegium clears the names, the files return to the central government. It then either notifies the appointments or sends them back with objections or its views.
- At this stage, the Supreme court collegium can seek additional inputs on the government's opinion. Accordingly, it can either reject or reiterate the proposal.
- If the collegium reiterates its decision, then, under the MoP, the government is bound to notify the appointments.
- However, the MoP does not specify a timeframe for the central government to act on a collegium decision.

Fig. 22.2: Appointment system of High Court Judges

QUALIFICATIONS, OATH AND SALARIES

Qualification of Judges

Article 217 (2): A person shall not be qualified for appointment as a Judge of a High Court unless he is a citizen of India and -

(a) has for at least ten years held a judicial office in the territory of India; or

(b) has for at least ten years been an advocate of a High Court or of two or more such Courts in succession.

If any question arises as to the age of a Judge of a High Court, the question shall be decided by the President after consultation with the Chief Justice of India and the decision of the President shall be final.

Oath or Affirmation

Article 219: Every person appointed to be a Judge of a High Court shall, before he enters upon his office, make and subscribe before the Governor of the State, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule.

In his oath, a judge of the High Court swears:

(a) To bear true faith and allegiance to the Constitution of India;

(b) To uphold the sovereignty and integrity of India;

(c) To duly and faithfully and to the best of his ability, knowledge and judgement perform the duties of the office without fear or favour, affection or ill-will and

(d) To uphold the Constitution and the laws.

Salaries and Allowance

Article 221:

(1) There shall be paid to the Judges of each High Court such salaries as may be determined by Parliament by law and, until provision in that behalf is so made, such salaries as are specified in the Second Schedule.

(2) Every Judge shall be entitled to such allowances and to such rights in respect of leave of absence and pension as may from time to time be determined by or under law made by Parliament and, until so determined, to such allowances and rights as are specified in the Second Schedule:

Provided that neither the allowances of a Judge nor his rights in respect of leave of absence shall be varied to his disadvantage after his appointment.

TENURE, REMOVAL AND TRANSFER

Tenure of Judges

- The Constitution has not fixed the tenure of a judge of the High Court.
- He/She holds office until he attains the age of 62 years. Age related questions are determined by the President after the consultation with the Chief Justice of India and the decision of Supreme Court is final.
- He/ She can resign his office by writing to the President.
- He/She can be removed from his office by the President on the recommendation of the Parliament.
- He/She vacates his office when he is appointed as a Judge of the Supreme Court or when is transfered to another High Court.

Fig. 22.3: Provision related to tenure of Judges

Removal of Judges

As per **Article 217 (1)(b)**, The Judge of the High Court can be removed from His/Her office by an order of the president. The President issues the removal order only after an address by Parliament has been presented to him in the same session for such removal. This address must be supported by a **special majority** of **each House of Parliament**.

The grounds of removal are two–**proved misbehaviour or incapacity**.

- A majority of the total membership of that House and
- A majority of not less than two-thirds of the members of that House present and voting.

The Judges Enquiry Act (1968): It regulates the procedure relating to the removal of a judge of the High Court by the process of impeachment:

- A removal motion signed by 100 members (in the case of Lok Sabha) or 50 members (in the case of Rajya Sabha) is to be given to the Speaker/Chairman.
- The Speaker/Chairman may admit the motion or refuse to admit it.
- If it is admitted, then the Speaker/Chairman is to constitute a three-member committee to investigate into the charges.
- The committee should consist of chief justice or a judge of Supreme Court, chief justice of a High Court, and a distinguished jurist.
- If committee finds guilty for misbehaviour, the House can take up the consideration of the motion.
- After the motion is passed by each House of Parliament by special majority, an address is presented to the president for removal of the judge.
- Finally, the president passes an order removing the judge.

Fig. 22.4: Procedure relating to the removal of a judge

Therefore, it is clear that the procedure for the impeachment of a judge of a High Court is the same as that for a judge of the Supreme Court. It is interesting to know that no judge of a High Court has been impeached so far.

Transfer of Judges

Article 222:

(1) The President, may, after consultation with the Chief Justice of India, transfer a Judge from one High Court to any other High Court.

(2) When a Judge has been or is so transferred, he shall, during the period he serves, after the commencement of the Constitution (Fifteenth Amendment) Act, 1963, as a Judge of the other High Court, be entitled to receive in addition to his salary such compensatory allowance as may be determined by Parliament by law and, until so determined, such compensatory allowance as the President may by order fix.

IGNITE YOUR MIND

The Judiciary is an area that has significant potential for emerging technologies to play a bigger role. Envision a futuristic courtroom within a High Court. What technological advancements and design features would you introduce to create a court room that enhances transparency, speed, and fairness in legal proceedings?

Various Events can be seen:

- The Supreme Court in 1977 ruled that the transfer of High Court judges could be resorted to only as an exceptional measure, only in public interest and not by way of punishment.
- Thereafter, in 1994, the Supreme Court held that judicial review is necessary to check arbitrariness in transfer of judges. In that case, only the judge who is transferred can challenge it.
- Also during the ***Third Judges case (1998)***, the Supreme Court gave an opinion.
  - For the transfer of High Court judges, the Chief Justice of India should be consulted in addition to the collegium of four senior most judges of the Supreme Court, the Chief Justice of the two High Courts (one from which the judge is being transferred and the other receiving Him/Her).

Thus, the sole opinion of the Chief Justice of India does not constitute the **'consultation'** process.

ACTING, ADDITIONAL AND RETIRED JUDGES

Acting Chief Justice (Article 223)

The President appoints a judge of the High Court as an acting Chief Justice of India when the office of Chief Justice of the High Court is vacant, the Chief Justice of the High Court is temporarily absent, the Chief Justice of the High Court is unable to perform the duties of his/ her office.

Additional and Acting Judges (Article 224)

The President appoints qualified persons as additional judges of a High Court for a **temporary period** and should **not exceed more than two years** when:

- Temporary increase in the business of the High Court
- Arrears of work in the High Court.

The President appoints a duly qualified person as an acting judge of a High Court when a judge of that High Court is:

- Unable to perform the duties of his office due to absence or any other reason; or
- Appointed to act temporarily as Chief Justice of that High Court.

Acting judge holds his office until the permanent judge resumes his office. Also, both the additional or acting judge cannot hold further office after 62 years of age.

Retired Judges (Article 224A)

The Chief Justice of a concerned state at any point of time can request a retired judge of that High Court or any other High Court to act as a judge of the High Court of that state for a temporary period.

- He/ She does this with the previous consent of the President and also with the person to be so appointed.
- This type of judge is entitled to such allowances as the President may determine.
- He enjoys all the jurisdiction, powers and privileges of a judge of that High Court. However, he will not be deemed to be a judge of that High Court.

INDEPENDENCE OF HIGH COURT

The independence of a High Court is essential for the effective discharge of the duties assigned to it. It should be free from the encroachments, pressures and interferences of the executive and the legislature and allowed to do justice without fear or favour.

The Constitution has made the following provisions to safeguard and ensure the independent and impartial functioning of a High Court.

Mode of Appointment	❑ The judges of the High Court are appointed by the President in consultation with the members of the judiciary, which curtails the absolute discretion of the executive. ❑ It also ensures that the judicial appointments are not based on any political considerations.
Security of Tenure	❑ They can be only removed from office by the President in the manner mentioned in the Constitution. ❑ Judges do not hold their office during the pleasure of the President, though they are appointed by him. ❑ Till now, **no judge of any High Court** has been **removed** so far.
Fixed Service Conditions	❑ The salaries, allowances, privileges, leave and pension of the judges of the High Court are determined by the Parliament. ❑ Thus, the conditions of service for the judges of the High Court remain the same during their term of office except during a financial emergency.
Expenses Charged on Consolidated Fund	❑ The salaries, allowances, pensions and administrative expenses of the High Court are **charged on the Consolidated Fund of the state**. ❑ Thus, they are non-votable by the Parliament. ❑ The pension of a High Court judge is charged on the Consolidated Fund of India and not the state.
Conduct of Judges cannot be discussed	❑ The Constitution prohibits any discussion in Parliament /State Legislature with respect to the conduct of the judges of the High Court in the discharge of their duties, except when an impeachment motion is under consideration by Parliament.
Ban on Practice after Retirement	❑ The retired judges of the High Court are prohibited to plead or act in any Court within the territory of India. ❑ This ensures that they do not favour any one in the hope of future favour.
Power to Punish for its Contempt	❑ It can punish any person for its contempt, this power is vested in the High Court to maintain its authority, dignity and honour. ❑ Thus, its actions and decisions cannot be criticised and opposed by anybody.
Freedom to Appoint its Staff	❑ The Chief Justice of the High Court can appoint officers and servants of the High Court without any interference from the executive. ❑ He can also prescribe their conditions of service.
Its Jurisdiction cannot be curtailed	❑ The Parliament and the State legislature are not authorised to curtail the jurisdiction and powers of the Supreme Court. ❑ The Constitution has guaranteed to the High Court, jurisdiction of various kinds.
Separation from Executive	❑ The Constitution directs the State to take steps to separate the Judiciary from the Executive in the public services **(Article 50**). ❑ This means that the executive authorities should not possess the judicial powers.

JURISDICTION AND POWERS OF HIGH COURT

Similar to the Supreme Court, the Constitution also vests High Courts with extensive and effective powers. It is said to be the highest court of appeal in the state. For its citizens, it is said to be the protector of Fundamental Rights. It also has the power to interpret the Constitution. Besides, it also has supervisory and consultative roles. The Constitution does not contain detailed provisions regarding the jurisdiction and powers of a High Court.

For the jurisdiction and powers of a High Court it is found to be the same as it was before the commencement of the Constitution. But, with few additions, The Constitution gives a High Court jurisdiction over revenue matters which was not prevalent in the pre-Constitution era. The Constitution confers additional powers on a High Court like writ jurisdiction, power of superintendence, consultative power, etc. However, it empowers the Parliament and the state legislature to change the jurisdiction and powers of a High Court.

At present, a High Court enjoys the following jurisdiction and powers:

- ❑ Original jurisdiction
- ❑ Writ jurisdiction
- ❑ Appellate jurisdiction
- ❑ Supervisory jurisdiction
- ❑ Control over subordinate courts
- ❑ A court of record
- ❑ Power of judicial review

The present jurisdiction and powers of a High Court are governed by:

- Constitutional provisions
- Letters Patent
- Acts of Parliament
- Acts of State Legislature
- Indian Penal Code, 1860
- Criminal Procedure Code, 1973
- Civil Procedure Code, 1908

Original Jurisdiction

As per **Article 225**, it confers the power of a High Court to hear disputes in the first instance, and not by way of appeal.

It extends to the given following matters:

- Matters of admiralty
- Contempt of court
- Regarding election disputes of the members of Parliament and state legislatures.
- Regarding revenue matters
- Enforcement of fundamental rights of citizens.
- Cases transferred from a subordinate court which involves the interpretation of the Constitution.

The High courts such by Calcutta, Bombay, Madras and Delhi High Courts have original civil jurisdiction in cases of higher value. The Criminal Procedure Code, 1973 abolished the powers of original criminal jurisdiction vested in the Calcutta, Bombay and Madras High Courts.

Writ Jurisdiction

As per **Article 226** of the Constitution, the High Court is empowered to issue writs which include **habeas corpus, mandamus, certiorari, prohibition and quo-warranto** for not only enforcement of the fundamental rights of the citizens but also for any other purpose. The phrase **'for any other purpose'** denotes the enforcement of an ordinary legal right. At the same time, it also issues writs to any person, authority and government within and outside its territorial jurisdiction.

The writ jurisdiction of the High Court is not exclusive but concurrent with the writ jurisdiction of the Supreme Court. It means that when the Fundamental Rights of a citizen are violated, the aggrieved party has the option of moving either the High Court or the Supreme Court directly. However, **the writ jurisdiction of the High Court is wider than that of the Supreme Court** because the Supreme Court can issue writs only for the enforcement of fundamental rights, i.e., it does not extend to a case where the breach of an ordinary legal right is alleged.

The High Court Jurisdiction is wider than that of the Supreme Court can be seen from the following factors in the table:

Factors	Supreme Court	High Court
Purpose	❑ It only enforces fundamental rights.	❑ It does not only enforce Fundamental rights but also ordinary legal right..
Territorial Jurisdiction	❑ It is against any person or government throughout the territory of India.	❑ It is against any person residing, government or authority located within its territorial jurisdiction only. ❑ It can be outside the territorial jurisdiction only if the cause of action arises within its territorial jurisdiction.
Power	❑ As per Article 32, the Supreme Court can not refuse to exercise its power in issuing the writs.	❑ The High Court may refuse to exercise its power to issue writs i.e., it has discretionary power.

During the **L. Chandra Kumar case (1997),** the Supreme Court held that the writ jurisdiction of both the High Court and the Supreme Court constitutes a part of the basic structure of the Constitution. Therefore, it cannot be ousted or excluded by way of an amendment to the Constitution.

Appellate Jurisdiction

The High Court is primarily a court of appeal because it hears appeals against the judgments of subordinate courts functioning in its territorial jurisdiction. It has appellate jurisdiction in both civil and criminal matters. Therefore we can say that **the appellate jurisdiction of a High Court is wider than its original jurisdiction.**

Civil Matters:

The civil appellate jurisdiction of a High Court is as follows:

- First appeals from the orders and judgements of the district courts, additional district courts, and other subordinate courts lie directly with the High Court.
  - On both questions of law and fact, if the amount exceeds the stipulated limit.
- Second appeals from the orders and judgements of the district court or other subordinate courts lie to the High Court
  - In cases involving questions of law only and not questions of fact.

- The Calcutta, Bombay, and Madras High Courts have provision for intra-court appeals.
- If a case has been decided by a single judge of the High Court under the original or appellate jurisdiction of the High Court then an appeal from such a decision lies with the division bench of the same High Court.
- Appeals from the decisions of the administrative and other tribunals lie to the division bench of the state High Court.

The Supreme Court in 1997 ruled that the tribunals are subject to the writ jurisdiction of the High Courts. At the same time, it is not possible for an aggrieved person to approach the Supreme Court directly against the decisions of the tribunals without first going to the High Courts.

Criminal Matters:

The criminal appellate jurisdiction of a High Court is as follows:

- If the imprisonment sentence is more than seven years then the appeals from the judgments of sessions court and additional sessions court lie with the High Court.
  - Capital punishment awarded by a sessions court or an additional sessions court should be confirmed by the High Court before it can be executed, whether there is an appeal by the convicted person or not.
- As per the **Criminal Procedure Code (1973)**, the appeals from the judgements of the assistant sessions judge, metropolitan magistrate or other magistrates lie with the High Court.

Supervisory Jurisdiction

As per **Article 227**, the High Court has power of superintendence over all other subordinate courts and tribunals functioning in its territorial jurisdiction except military courts or tribunals.

Thus, it may–

- Call for returns from such courts
- Make and issue general rules and prescribe forms for regulating the practices and proceedings of such courts
- prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.
- Settle the fees payable to the sheriff, clerks, officers and legal practitioners of them.

This power of superintendence of a High Court is very broad because it:

- Extends to all courts and tribunals, although subjected to the appellate jurisdiction
- Covers administrative superintendence as well as judicial superintendence
- Acts as a revisional jurisdiction
- Can be suo-motu and not necessarily on the application of a party.

However, this power does not give the High Court any unlimited authority over the subordinate courts and tribunals. Although it seems to be an extraordinary power, it has to be used most sparingly and only in appropriate cases.

Usually, it is limited to,

- Excess of jurisdiction
- Gross violation of natural justice
- Error of law
- Disregard to the law of superior courts
- Perverse findings,
- Manifest injustice

Control over Subordinate Courts

As per **Article 235,** the High Court has control over district courts and subordinate courts. In addition to Appellate and supervisory jurisdiction over the Subordinate courts as mentioned above, the High Court also has administrative control and several other powers over them.

These includes the following:

- Consultation by the governor in the matters of appointment, posting and promotion of district judges.
- Appointments of persons to the judicial service of the state other than district judges.
  - Deals with the matters of posting, promotion, grant of leave, transfers and discipline of the members of the judicial service of the state other than district judges.
- Withdraws a case pending in a subordinate court if it involves a substantial question of law
  - If it requires the interpretation of the Constitution or either dispose of the case itself or determine the question of law and return the case to the subordinate court with its judgement.
- Laws declared by High Courts are binding on all subordinate courts functioning within its territorial jurisdiction in the same sense as the law declared by the Supreme Court is binding on all courts in India.

A Court of Record

As per Article 215, every High Court has the following powers with respect to Court of Record

- The judgements, proceedings and acts of the High Court which are recorded for perpetual memory and testimony and may be admitted as evidentiary value and cannot be questioned when produced before any court.
  - It is also recognised as a legal precedent and legal reference

- It has the power to **punish for contempt of court,** either with simple imprisonment for a term up to six months or with both.

- The expression '**contempt of court**' has not been defined in the Constitution. But, however, it has been defined in the **Contempt of Court Act of 1971**. Under this, contempt of court may be civil or criminal. It means, wilful disobedience to any judgement order of a court or wilful breach of an undertaking given to a court.
- **Civil contempt** means wilful disobedience to any judgement, order, writ or other process of a court.
- **Criminal Contempt means the publication of any matter or the doing of any other act which scandalises or lowers the authority of any court, or interferes with the due course of any judicial proceeding, or obstructs the administration of justice in any other manner.**

The High Court also has the power to review and correct its own judgement or order or decision, even though the Constitution does not confer any specific power of review. But, on the other hand, the Supreme Court has specifically been conferred the power of review by the Constitution.

Power of Judicial Review

This term denotes the power of the High Court to examine the constitutionality of legislative enactments and executive orders of not only the Central but also state governments. If it is found that the law in question violates the Constitution (ultra-vires) then it can be declared as illegal, unconstitutional and invalid by the High Court. Consequently, they cannot be enforced by the Government.

IGNITE YOUR MIND

Constitutional morality focuses on the rights of individuals and protects it from popular morality notions of the society. Think of High Courts as champions of equality. How do you think they make sure everyone is treated equally and has the same opportunities? Can you think of examples where High Courts have stood up for equality and fairness?

The phrase 'judicial review' has no where been used in the Constitution, but with provisions such as **Article 13 and 226,** it explicitly confers the power of judicial review for a High Court.

The constitutional validity of any act or an executive order can be challenged in a High Court on the following three grounds:

- It infringes upon the fundamental rights (Part III),
- It is outside the competence of the authority,
- It is repugnant to the constitutional provisions.

However, the 42nd Amendment Act of 1976 curtailed the power of the High Court. It debarred the High Courts from considering the constitutional validity of any central law. But later, the 43rd Amendment Act of 1977 restored the original position.

Other Powers

- **Transfer of Certain Cases to High Court:** As per **Article 228,** the High Court is empowered to withdraw a case that is pending in a subordinate court which involves a substantial question of law or required constitutional interpretation.
- **Officers and servants and the expenses of the High Court:** As per **Article 229,** the Chief Justice of the High Court has the freedom to appoint the officers and servants of the High Court without any executive interference. The Chief Justice is also empowered to prescribe their condition of services.

CONCLUSION

The High Courts in India are vital pillars of the country's judiciary, playing a crucial role in maintaining the rule of law and upholding constitutional values. In essence, the High Courts in India not only interpret and enforce the law but also embody the democratic ethos of the nation, making them indispensable to India's legal and constitutional framework.

Subordinate Courts

23

INTRODUCTION

In every state, the judicial system consists of a high court and a hierarchy of subordinate courts, also known as lower courts. They are called as subordinate courts because they are subordinate to the state High Court. Their functions are below the High Court at district and lower levels.

CONSTITUTIONAL PROVISIONS

Within the Constitution, provisions such as **Articles 233 to 237** in **Part VI** help to regulate the organisation of subordinate courts and also to ensure their independence from the executive.

Appointment of District Judges (Article 233)

The appointment, posting and promotion of district judges in a state shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State.

A person to be appointed as district judge should have the following qualifications:

- Not already in the service of the Union or of the State Government
- Advocate or a pleader for seven years.
- Recommended by the high court.

Appointment of Persons (other than district judges) (Article 234)

Appointments of persons other than district judges to the judicial service of a State shall be made by the Governor of the State in accordance with rules made by him in that behalf after consultation with the State Public Service Commission and with the High Court exercising jurisdiction in relation to such State.

Control over Subordinate Courts (Article 235)

The high court has the power to manage the district courts and other lower courts in the state. This includes the transfer, promotion, and leave of the judicial officers who are below the rank of district judge.

Interpretation

The term 'district judge' expression includes:

- Judge of a city civil court
- Additional district judge
- Joint district judge
- Assistant district judge
- Chief judge of a small cause court
- Chief presidency magistrate
- Additional chief presidency magistrate
- Sessions judge
- Additional sessions judge

The term 'judicial service' denotes a service consisting exclusively of persons intended to fill the post of district judge and other civil judicial posts inferior to the post of district judge.

STRUCTURE AND JURISDICTION

The structure, jurisdiction and nomenclature of the subordinate judiciary are laid down by the states, so they differ slightly from state to state. There are three tiers of civil and criminal courts below the High Court.

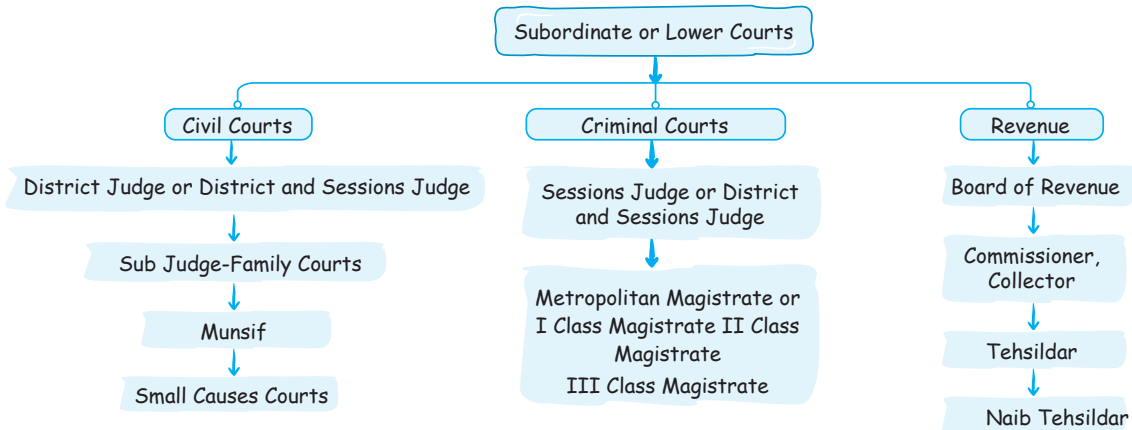


Fig. 23.1: Structure and Jurisdiction

The district judge is also called the sessions judge and has the highest judicial authority in the district and possesses original and appellate jurisdiction in both civil as well as criminal matters.

District judge: When he deals with civil cases,

Sessions judge: When he hears the criminal cases

Powers of District Judge

- The district judge exercises both judicial and administrative powers.
- He/she also has supervisory powers over all the subordinate courts in the district.

But, the appeals against his orders and judgements lie to the High Court.

Powers of Session Judge

- He/she can impose any sentence including life imprisonment and capital punishment (death sentence).
- However, a capital punishment passed by him/her is subject to confirmation by the High Court, whether appeal has been done or not.

Category of Cases below the District and Sessions Court

- **The Court of Subordinate Judge on the civil cases:** Exercises unlimited pecuniary jurisdiction over civil suits
- **The Court of Chief Judicial Magistrate on the criminal cases:** Decides criminal cases which are punishable with imprisonment for a term up to seven years.

IGNITE YOUR MIND

Making access to justice a reality, is one of the most laudable objectives that our Constitution has engrafted. Do you think the subordinate courts fulfill this objective?

At the lowest level of the Subordinate Court

- **For the civil cases:** Is the Court of Munsiff and it possesses limited jurisdiction and decides civil cases of small pecuniary stake
- **For the criminal cases:** The Court of Judicial Magistrate tries criminal cases which are punishable with imprisonment for a term up to three years.

Metropolitan Cities

- **For the Civil cases:** City civil courts (chief judges)
- **For the Criminal Cases**: Courts of Metropolitan Magistrates

Further, we see that few States and Presidency towns have established small cause courts.

- These courts decide the civil cases of small value in a summary manner and their decisions are final, but the High Court possesses a power of revision.

In some states, Panchayat Courts try petty civil and criminal cases.

- They are known by various names such as Nyaya Panchayat, Gram Kutchehry, Adalati Panchayat, Panchayat Adalat, and so on.

CONCLUSION

The subordinate courts in India are fundamental to the country's judicial framework, offering accessible and initial legal recourse to the public. Despite various challenges, their role in dispensing justice at the grassroots level is indispensable, making them an essential component of India's legal system.

Alternate Dispute Resolution and Other Courts

24

ALTERNATE DISPUTE RESOLUTION (ADR)

A dispute redressal mechanism is a structured process that addresses disputes or grievances that arise between two or more parties engaged in business, legal, or societal relationships. ADR means any procedure agreed to by the parties to a dispute in which they use the services of a neutral party to assist them in reaching an agreement and avoiding litigation.

Nature: Dispute Redressal Mechanisms are typically non-judicial in nature, which denotes that they are not resolved within the court of law.

Constitutional Provisions

- Article 14: Equality Before Law
- Article 39A: Equal Justice and Free Legal Aid.
- Article 32: Right to Constitutional remedies, Right of people to seek justice

Methods of ADR

Dispute Redressal mechanisms are used in dispute resolution and may incorporate conciliation, conflict resolution, mediation, and negotiation.

1. Arbitration:

Arbitration is considered an adjudicatory alternate dispute resolution mechanism in which a neutral third party known as the arbitrator will decide the dispute on merits.

- **Present status:** Arbitration is currently the only legally enforceable and binding option to traditional court proceedings.
- **Related Statutory Provisions:** The **Arbitration and Conciliation Act, 1996** has consolidated the law related to domestic arbitration, international commercial arbitration, and enforcement of foreign arbitral awards.
  - It has minimised judicial intervention and provided the mechanism for the removal and replacement of arbitrators.
- **Speedy disposal of disputes:** The 1996 Act got further amended in 2015 and 2019 to ensure the speedy disposal of disputes by the arbitral tribunals, encourage institutional arbitration and ensure fairness in arbitral proceedings.

2. Conciliation:

- It is a non-adjudicatory alternate dispute resolution mechanism in which a neutral third party helps the disputing parties to resolve their disputes amicably.
- **Role of conciliator:** In conciliation, the conciliator may give his views and suggestions to the parties for the resolution of the disputes. In conciliation, the conciliator plays an active role.
- **Related provisions:** In 1980, **UNCITRAL** framed Conciliation Rules for resolving international commercial disputes through conciliation uniformly across the world.
  - This model rule was adopted by the UN General Assembly in 1980. India is one of the signatories to these rules. Hence, it has an obligation to incorporate the same in its domestic legislation.

3.Mediation:

- It is known as third-party facilitated negotiation, in which the neutral third party will facilitate the disputants to come up with an amicable settlement.
  - In mediation, the mediator plays a passive role.
- **Role of mediator:** Mediation can be termed assisted negotiation, wherein the mediator, by virtue of his influence, brings the parties to the negotiating table and assists in the settlement of their disputes.
- **Wider powers than a mediator:** In India, a conciliator has wider powers than a mediator. The conciliator can make a proposal for settlement, and he can formulate and reformulate the terms of settlement of the dispute whereas the mediator facilitates the parties to come up with the settlement.
- **Present status:** The court-annexed mediation centres are functioning in many trial courts across the country including Allahabad, Lucknow, Chandigarh, Ahmedabad, Rajkot, Jamnagar, and Surat.
- **Statutory provisions:** There are some Acts that mandate the courts to conciliate/mediate their disputes before proceeding with further hearing of the disputes.
- **Examples-**
  - **The Hindu Marriage Act** mandates the trial court must try for the reconciliation of the disputants to resolve their dispute amicably before preceding its hearings.

- **The Family Courts Act** also encourages the resolution of the matrimonial dispute through conciliation and mediation.

The **Himachal Pradesh High Court** had initiated a **"Conciliation Court"** pilot project in the entire state of Himachal Pradesh and asked the trial courts of the civil side to refer all the cases to Conciliation Courts before the commencement of trial. It was a substantial success.

4. Negotiation:

- **Negotiation closely resembles mediation:** It is more often referred to as a method where in the parties to the dispute themselves would settle their disputes.
- **Limited Role:** Even if a third-party negotiator is involved in the process of negotiation, his role would be limited to inducing the parties to the process of negotiation.
- **Mediation and negotiation:** It provides better and more satisfactory solutions to certain kinds of disputes, such as family disputes, disputes with neighbours, matrimonial disputes, industrial disputes and several petty disputes.

The Different Mechanisms

The different platforms used in India for ADR are as given in Fig. 24.3.

Main Focus: This system focuses on Mediation rather than winner-take-all, at the same time, it also helps to increase accessibility to justice, improve efficiency, and reduce court delays.

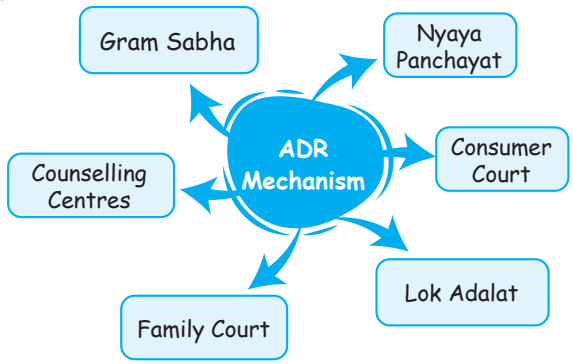


Fig. 24.3: ADR Mechanism

Implementation of ADR

Incorporation in Contracts	• Many commercial contracts include clauses requiring parties to engage in ADR before pursuing litigation.
Court-Annexed ADR Programs	• Courts may encourage or mandate ADR as a preliminary step before formal litigation.
Voluntary Participation	• ADR is often most effective when parties voluntarily choose to engage in the process.

Arbitration and Conciliation (Amendment) Act, 2021

This act helps to check the misuse by **"fly-by-night operators"** who take advantage of the law so that they can get favourable awards by fraud.

Key Features

- **Qualifications of Arbitrators:** It abandoned the qualifications of the arbitrators under 8th Schedule of the Arbitration and Conciliation Act, 1996, where the arbitrator must be an advocate under the Advocates Act, 1961, and either he should have 10 years of experience or be an officer of the Indian Legal Service.
  - The qualifications for accreditation of arbitrators are proposed to be prescribed by regulations to be framed by the Arbitration Council of India (ACI).
- **Unconditional stay on Awards:** If the Award is being given on the basis of a fraudulent agreement or corruption, then the court can grant an unconditional stay as long as an appeal under Section 34 of the arbitration law is pending.
  - It has removed the automatic stay of the 2015 Act where it was suggested that the operation of the award was merely the filling of an application.

Impact of Amendment Over Dispute Resolution

- **Checks irregularities:** It helps to check fraud and corruption.
  - It will help to check misuse of the provisions under the Arbitration and Conciliation Act, 1996 which would help to save the taxpayers money by holding those accountable who syphoned off of them unlawfully.
- **Promotion of Commercial Hub of Arbitration:** It will promote India as a Hub of commercial arbitration by attracting eminent arbitrators to the country since it omits 8th Schedule which will give greater flexibility.

Issues with Proposed Amendment

- **Role of losing Party becomes a crucial factor:** For prolonged litigation, if the losing party alleges corruption and obtains an automatic stay on enforcement of the arbitral award, that leads to an alternate dispute mechanism.
- **Handling cases in a retrospective manner:** As the amendment in Act is in a retrospective manner, i.e., from 2015, with respect to automatic stay, may open floodgates of litigation.

- It will affect the enforcement of international contracts and ultimately affect the ease of doing business in India.

- **Irregularity in provisions and terms:** This act does not define fraud and corruption.

The Courts will have to be cautious while formulating a test for granting an unconditional stay on the operation of the award.

Advantages of ADR

- According to the 222nd **Law Commission Report (Need for justice dispensation)** ADR are
  - **Less expensive**.
  - **Less time-consuming:** As there is no appeal, so speedy dispute resolution happens.
  - **Free from technicalities:** It is more flexible and responsive to the individual needs of the people involved.
  - **Parties are free:** To discuss their differences of opinion without any fear of disclosure before the court.
- **Continuing relationship:** There is no feeling of winning or losing among parties, and grievances are redressed, which preserves goodwill.
- **Improved enforcement:** As per World Bank's Ease of doing business ADR helps to improve average days of enforcement of contracts.
- **Greater compliance:** The parties' involvement in the process creates greater commitment to the result, so compliance is more likely.
- **Saving Forex reserves:** Significant amounts of forex are lost on arbitration in foreign countries like Singapore.

Limitation of ADR

- **Lack of awareness:** People, lawyers, and judicial officers are unaware of the mandate to transfer cases to arbitration and conciliation.
- **The good faith of the parties:** That is necessary for the success of ADR. Uninformed parties remain at a disadvantage in succeeding in an ADR.
- **Scepticism about the process and result:** Many of the litigants are not satisfied and invariably dissociate themselves and go to formal courts.
  - Decisions are forced on poor people and women.
- **Voluntary process:** Without a mutually signed agreement, parties can't be forced to resolve their disputes by ADR. Making all the parties agree to an arbitration agreement is a difficult task.
- **Forcible transfers:** By the judiciary to end judicial tendencies.
- **Neutral arbitrator:** Unsatisfied party invariably blames the arbitrator for bias and non-fairness.
- **Non-resolution of disputes:** Except for arbitration which is a binding decision, the ADR process may not always yield a resolution. It can be used just as a stalling tactic.
- **Limited scope:** ADR resolves only issues of money or civil disputes and its proceedings will not result in injunctive orders (ordering parties to do or not do something).
- **No appeal:** Unlike courts where appeal to a higher court is available, the decision of a neutral arbitrator cannot be appealed.

Challenges and Considerations

- **Enforceability of Agreements:** Ensuring that agreements reached through ADR mechanisms are legally enforceable can be a consideration.
- **Power Imbalance:** In some situations, there may be a power imbalance between parties that needs to be addressed in ADR.
- **Training and Qualifications:** The effectiveness of ADR often depends on the skills and qualifications of the neutral third party facilitating the process.

Way Forward

- **Speedy and successful ADR:** Incorporating tools like E-Lok Adalat, expanding scope in pre-litigation. To build confidence in the litigants and make them opt for ADR mechanisms.
- **Promote as a career:** By creating trained arbitrators, and mediators, laying down procedures for quality control, ethical standards, and the accountability of arbitrators.
- **Reducing judicial pendency:** In 46% of the pending cases, governments are litigants, opting for the ADR mechanism can unburden the courts and build a culture of ADR.
- **Coordinated Efforts:** By the judiciary, lawyers, government, and litigants to create a conducive ecosystem for mediation.
- **Expand scope:** Establish arbitration and mediation centres for non-commercial disputes.
- **Attitudinal change:** It needs to bring people to choose ADR mechanisms with confidence and trust.
- **Other measures:** Infrastructure for ADR, Skilling of lawyers in ADR, providing required manpower.

NATIONAL LEGAL SERVICES AUTHORITY (NALSA)

Background

The Parliament enacted the **Legal Services Authorities Act** in **1987** which came into force on November 9, 1995. Its aim was to establish a nationwide uniform network

and also to provide free and competent legal services to the weaker sections of the society on the basis of equal opportunity.

The National Legal Services Authority (NALSA) has been constituted under the Legal Services Authorities Act, 1987 which helps to monitor and evaluate implementation of legal aid programmes and to lay down policies and principles for making legal services available under the Act.

Objectives

- To provide free legal aid and advice.
- To spread legal awareness.
- To organise Lok Adalat.
- Promote settlement of disputes through Alternative Dispute Resolution Mechanisms.
- Various kinds of ADR mechanisms are:
  - Arbitration, Conciliation, Judicial settlement including settlement through Lok Adalat, or Mediation.
- To provide compensation to victims of crime.

Constitutional Provisions

- **Article 39A:** It provides for free legal aid to the poor and weaker sections of the society and ensures justice for all.
- **Articles 14 and 22(1):** It makes it obligatory for the State to ensure equality before law and a legal system which promotes justice on the basis of equal opportunity for all.

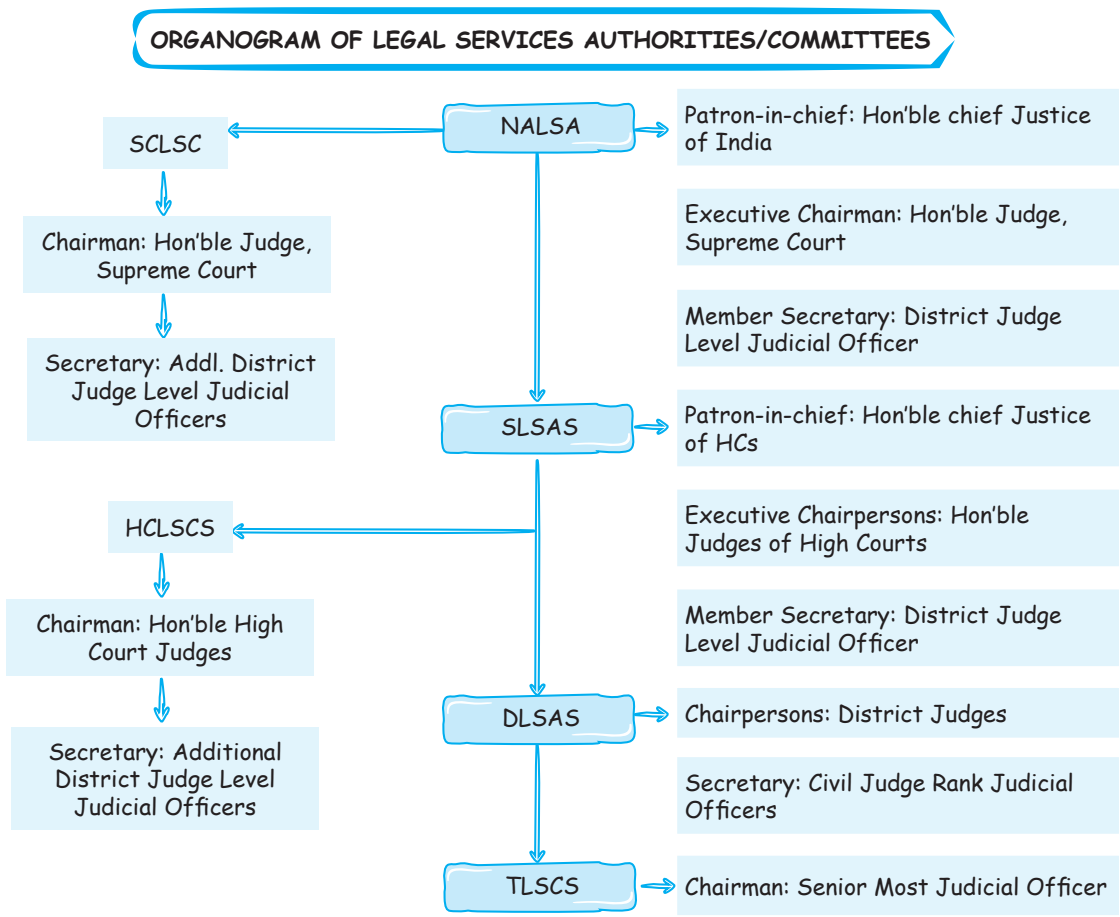

ORGANOGRAM OF LEGAL SERVICES AUTHORITIES/COMMITTEES
NALSA
Patron-in-chief: Hon'ble chief Justice of India
SCLSC
Executive Chairman: Hon'ble Judge, Supreme Court
Chairman: Hon'ble Judge, Supreme Court
Member Secretary: District Judge Level Judicial Officer
Secretary: Addl. District Judge Level Judicial Officers
SLSAS
Patron-in-chief: Hon'ble chief Justice of HCs
HCLSCS
Executive Chairpersons: Hon'ble Judges of High Courts
Chairman: Hon'ble High Court Judges
Member Secretary: District Judge Level Judicial Officer
DLSAS
Chairpersons: District Judges
Secretary: Additional District Judge Level Judicial Officers
Secretary: Civil Judge Rank Judicial Officers
TLSCS
Chairman: Senior Most Judicial Officer

Fig. 24.4: Organogram of Legal Services Authorities/Committees

Legal Service Institutions At Various Levels

There are various levels below the national stage of providing free legal service institutions, and they are at the state, district, and also at the taluka level.

The **Supreme Court Legal Services Committee** has been constituted to administer and implement the legal services programmes as they relate to the Supreme Court of India.

The **NALSA** lays down policies, principles, guidelines and frames effective and economical schemes for the State Legal Services Authorities (SLSA) to implement the Legal Services Programmes throughout the country.

Primarily, **the State Legal Services Authorities,** have been asked to discharge the following main functions on regular basis:

- To provide free and competent legal services to the eligible persons.
- To organise Lok Adalats for amicable settlement of disputes.
- To organise legal awareness camps in the rural areas.

National Level: NALSA was constituted under the Legal Services Authorities Act, 1987. The Chief Justice of India is the Patron-in-Chief.

State Level: State Legal Services Authority. It is headed by the Chief Justice of the State High Court who is its Patron-in-Chief.

District Level: District Legal Services Authority. The District Judge of the District is its ex-officio Chairman.

Taluka/Sub-Division Level: Taluka/Sub-Divisional Legal Services Committee. It is headed by a senior Civil Judge.

Eligibility for free legal services

- Women and children
- Members of SC/ST community
- Victims of mass disaster, violence, flood, drought
- Disabled persons
- Industrial workmen
- Persons in custody
- Persons whose annual income does not exceed ₹1 lakh
  - But for the Supreme Court Legal Services Committee, the limit is ₹5 lakh
- Victims of trafficking in human beings or beggars.

Services Under Free Legal Services

Payment of court fee, process fees and all other charges payable.

Providing service of lawyers in legal proceedings.

Certified copies of orders and other documents in legal proceedings.

Preparation of appeal, paper book including printing and translation of documents.

Initiatives For Legal Services

- **Legal Service Mobile App**
  - This app was launched by NALSA and it helps to enable equitable access to justice and easy access to legal aid to common citizens.
- **DISHA (Designing Innovative Solutions for Holistic Access to Justice Scheme)**
  - This scheme was launched by the Department of Justice (DoJ) for a comprehensive, holistic, integrated, and systemic solution to access to justice at the pan-India level and will be implemented between 2021 and 2026.
    - This scheme includes **Tele-law, NYAYA Bandhu, Nyaya Mitra**.
- **Various schemes**
  - NALSA (Free and Competent Legal Services) Regulations, 2010
  - NALSA (Legal Aid Clinics) Regulations, 2011
  - NALSA (Protection and Enforcement of Tribal Rights) Scheme, 2015
  - NALSA (Child Friendly Legal Services to Children and their Protection) Scheme, 2015
  - NALSA (Victims of Trafficking and Commercial Sexual Exploitation) Scheme, 2015.
- **Campaigns and programmes on various themes**
  - Access to Justice for All
  - Connecting to Serve
  - My Nation with Equality

Roles and functions of NALSA

- Laying down policies and principles for millions of beneficiaries through its panel of lawyers and paralegal volunteers.
- Organising thousands of Lok Adalats at various levels and disposing of lakhs of cases amicably.
- Framing effective and economical schemes for legal services.
- Monitoring and evaluation of the implementation of legal services.
- Conducting legal awareness programs and promoting literacy among the people.
- Settlement of disputes by negotiations, arbitration, conciliation, and mediation.
- Coordinate and cooperation with other governmental and non-governmental agencies.
- Organising thousands of Lok Adalats at various levels and disposing of lakhs of cases amicably.

Challenges faced by NALSA

- **Lack of training for providing services:** It has been found that the legal aides are not well trained for handling free legal services and people associated with it.
- **Less beneficiaries found while reporting:** The number of actual beneficiaries of the legal aid services is less, according to the India Justice Report of 2019.

- **Ineffective practices being carried out:** The organisational practices are uneven, which hampers the legal services on the national scale as a collective.
- **Absence of gender parity:** Gender parity is missing among the representatives, which is hindering the aid of the women victims.
- **Inadequate mechanism for monitoring customer satisfaction:** There is a lack of optimal financial management, inadequate performance monitoring, and no mechanism to record customer satisfaction.

Assistance of Legal Services is neither a gift nor a charitable act, but it is a civic duty and a right. The main objective of every state should be to provide equal justice to all. It has played a vital role in rendering free legal aid in India by providing legal assistance, organising Lok Adalats, conducting legal awareness programmes, launching various schemes and initiatives, etc. At the same time, there are also some challenges and limitations faced by NALSA in rendering free legal aid in India, which need to be addressed and overcome by enhancing the resources, quality, coordination, uniformity, and monitoring of legal services.

IGNITE YOUR MIND

Think of NALSA as a team of community problem solvers. How can NALSA help people in different parts of the country resolve legal issues and make sure their voices are heard? Can you give examples of common problems NALSA might help with?

Lok Adalats

Meaning

Lok Adalats, or people's courts, are a form of alternative dispute resolution (ADR) that is used to settle disputes outside of the traditional court system. They are designed to be more accessible and affordable than the courts and to provide a more informal and conciliatory setting for resolving disputes. This system is based on **Gandhian principles**.

The Supreme Court has explained the **'Lok Adalat'** as an old form of adjudicating system that was prevalent in ancient India, and its validity has not been taken away even in the modern days. It also includes the components of the ADR (Alternative Dispute Resolution) system.

Background

The **First Lok Adalat camp** was organised in **Junagarh, Gujarat, in 1982,** and this initiative proved to be successful in the settlement of disputes. Consequently, this institution of Lok Adalat started to spread to other parts of the country. During that time, this institution was functioning as a voluntary and conciliatory agency without any statutory backing for its decisions, but with its growing popularity, there arose a demand to provide a statutory backing to this institution. Hence, the institution of Lok Adalat has been given **statutory status** under the **Legal Services Authorities Act, 1987.**

Need of Lok Adalat

- Currently, the Indian courts are overburdened with a backlog of cases and the regular courts involve the cases that require lengthy, expensive, and tedious procedures.
- It provides an alternative resolution or devise for expeditious and inexpensive justice.
- In its proceedings, there are no victors or vanquished, so there is no rancour.
- It is accepted in India as it is a viable, economical, efficient, and informal one.

Types of Lok Adalat

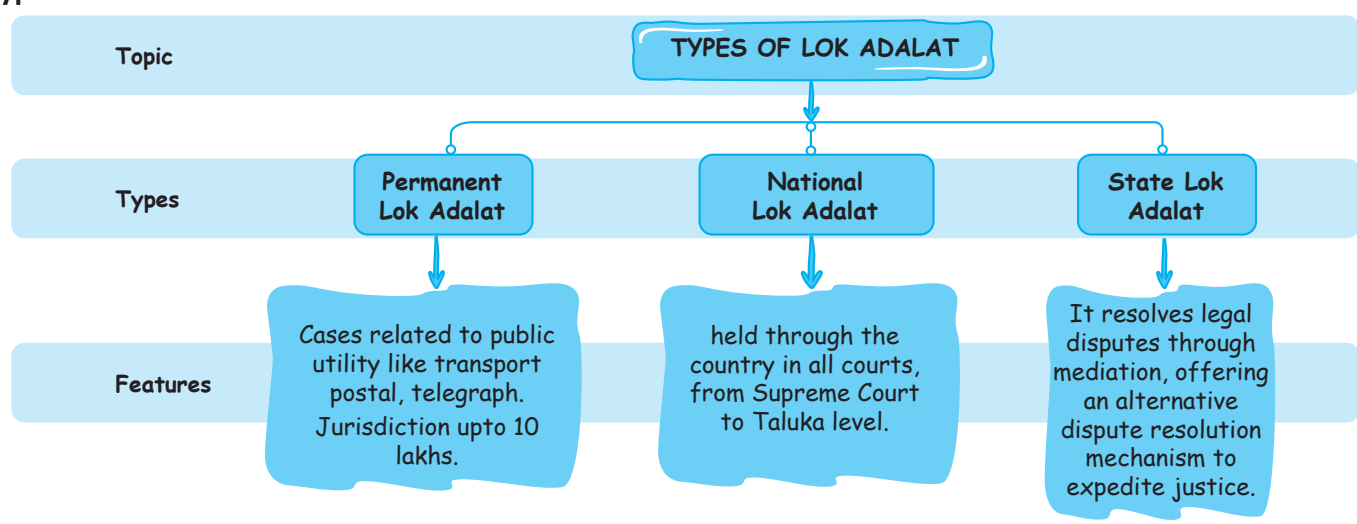

Topic
TYPES OF LOK ADALAT
Types
Permanent Lok Adalat
National Lok Adalat
State Lok Adalat
Features
Cases related to public utility like transport postal, telegraph. Jurisdiction upto 10 lakhs.
held through the country in all courts, from Supreme Court to Taluka level.
It resolves legal disputes through mediation, offering an alternative dispute resolution mechanism to expedite justice.

Fig. 24.5: Types of Lok Adalat

Organisations and Functions

1. **Organisation level:** Authority at every level (SLSA, DLSA OR SCLSA/HCLSA) organises Lok Adalats at such intervals.
2. **Composition of Members:** Every Lok Adalat organised for an area shall consist of:
   a. Serving or retired judicial officers.
   b. Other persons of the area as specified by the agency.
   c. Generally, a Lok Adalat consists of:
      i. **Chairman:** Judicial officer as the chairman.
      ii. **Members:** A lawyer/advocate and a social worker.
3. **Jurisdiction:** It tries to arrive for compromise or settlement between the parties to a dispute in respect of:
   a. Any case pending before any court
   b. Any matter which is falling within the jurisdiction of any court and not brought before such court.
   c. The offenses that are not compoundable under any law fall outside the purview of the Lok Adalat.
4. **Types of Cases dealt:**
   a. Cases pending before a court and also with the disputes at pre-litigation stage.
   b. Other matters such as:
      i. Matrimonial/Family Disputes
      ii. Criminal cases
      iii. Land Acquisition cases
      iv. Labour disputes
      v. Workmen's compensation cases
      vi. Bank Recovery cases
      vii. Pension cases
      viii. Housing Board and Slum Clearance cases
   c. Cases pending before the court can be referred to the Lok Adalat for settlement if:
      i. Both the parties agree to settle the dispute in the Lok Adalat
      ii. One of the parties makes an application to the court
      iii. The court is satisfied that the matter is an appropriate one to taken cognizance
   d. Case of a pre-litigation dispute, the matter can be referred to the Lok Adalat for settlement upon receipt of an application from any one of the parties to the dispute.
5. **Powers:**
   a. It has the same powers as vested in a Civil Court under the Code of Civil Procedure (1908):
      i. Summon and enforce the attendance of any witness examining him on oath
      ii. Discover and produce any document
      iii. Reception of evidence on affidavits
      iv. Requisition of any public record
   b. It has the powers to specify its own procedure for the determination of any dispute coming before it.
      i. All proceedings before a Lok Adalat shall be deemed under the Indian Penal Code 1860).
   c. Every Lok Adalat shall be deemed to be a Civil Court for the purpose of the Code of Criminal Procedure (1973).
6. **Award of Lok Adalat:**
   a. It deems to be a decree of a Civil Court or an order of any other court.
   b. Every award made by a Lok Adalat shall be final and binding on all the parties to the dispute.
   c. No appeal shall lie to any court against the award of the Lok Adalat.

Benefits of Lok Adalat

According to the **Supreme Court,** the **benefits under Lok Adalat** are as follows:

- There is no court fee, and if fees are paid, it will be refunded if the dispute is settled at Lok Adalat.
- It's procedural flexibility and speedy trial of the disputes.
- There is no strict application of procedural laws like the Civil Procedure Code and the Evidence Act.
- Parties to the dispute can directly interact with the judge through their counsel.

The Law Commission of India summarised the advantages of ADR (Alternative Dispute Resolution) in the following way:

- less expensive
- Less time-consuming
- Free from technicalities
- Parties are free to discuss their differences of opinion without any fear of disclosure.
- Parties have the feeling that there is no losing or winning side between them and their grievance is redressed.

Concerns of Lok Adalat

- **Voluntary participation:** The parties to a dispute must agree to participate in a Lok Adalat.
- **Limited jurisdiction:** Lok Adalats can only resolve disputes that are within their jurisdiction.

- **Ineffectiveness:** Lok Adalats may not be effective in resolving complex or contested disputes.
- **Cases filed against bigger organisations:** It has been found that in a majority of cases, litigants are pitted against entities with deep pockets, such as electricity boards, insurance companies, banks, etc.
- **Compromises imposed on the weaker section:** In most of the cases, compromises are imposed on the poor who often have no choice but to accept them.
- **Speedy justice not available:** As it has become a central idea of compromise which fails in the endeavour for speedy disposal of cases and it undermines the idea of justice.
- **State of Punjab vs Jalour Singh Case (2008):** It held that a Lok Adalat is purely conciliatory and it has no adjudicatory or judicial function.

Way Forward

- **Need for Coordinated Efforts:** by the judiciary, lawyers, government, and litigants to create a conducive ecosystem for mediation.
- **Expand scope:** Establish arbitration and mediation centres for non-commercial disputes.
- **Attitudinal change:** It needs to bring people to choose ADR mechanisms with confidence and trust.
- **Speedy and successful ADR:** Incorporating tools like E-Lok Adalat, expanding scope of pre-litigation -> builds confidence in the litigants and makes them opt for ADR mechanisms.
- **Promote as a career:** By creating trained arbitrators, and mediators, laying down procedures for quality control, ethical standards, and accountability of arbitrators.
- **Reducing judicial pendency:** In 46% of the pending cases, governments are litigants, opting for the ADR mechanism can unburden the courts and build a culture of ADR.
- **Other measures:**
  - Infrastructure for ADR, skilling of lawyers in ADR, providing required manpower.
  - Enact the Arbitration and Conciliation (Amendment) Bill, 2018 to fill the legislative lacunae.
  - **Arbitration Council of India:** Appointment of arbitrator by SC/HC; Electronic depository of arbitral awards.
  - Protect the arbitrator from legal proceedings for an action done in good faith.

The Lok Adalats will be functional at larger levels if people are willing and aware of their advantages. It is also further emphasised that there should be more provisions and innovative utilisation that could empower permanent Lok adalats and be made a supplementary form of litigation for people who cannot or should not resort to courts.

Permanent Lok Adalats

Background

The Permanent Lok Adalats were established in 2002 by amending the Legal Services Authorities Act, of 1987 to deal with cases pertaining to public utility services.

Reasons for adoption

The reasons for the establishment of Permanent Lok Adalats are as follows:

- It provided free and competent legal services to every weaker section of society.
- It ensured that opportunities for securing justice are not denied to any citizen due to economic or other disabilities.
- It ensures that the operation of the legal system promotes justice on the basis of equal opportunity.
- It has also proven to be effective for resolving disputes in a spirit of conciliation outside the courts.

Salient Features

- **Composition:-**
  - **Chairman:**
    - Serving or retired District judge or
    - Additional district judge or
    - He has held judicial office higher in rank than that of the district judge.
  - **Other two persons:** Having adequate experience in public utility services.
- **Jurisdiction**
  - **It exercises jurisdiction with respect to one or more public utility services:**
    - Transport services of passengers or goods by air, road, and water
    - Postal, telegraph, or telephone services
    - Supply of power, light, or water to the public
    - Public conservancy or sanitation
    - Services in hospitals or dispensaries
    - insurance services
  - **Pecuniary jurisdiction** - It shall be up to ten lakh rupees, but the Central Government may increase the said pecuniary jurisdiction upto 1 Crore.
  - It **does not have jurisdiction** in respect of matters related to an **offense not compoundable** under any law.

Conditions for Application

If any party makes an application to the Permanent Lok Adalat for settlement of dispute, then no party can invoke for jurisdiction of any court in the same dispute.

- **If it appears to solve disputes:** It shall formulate the terms of a possible settlement
- **If fails to reach an agreement:** It shall decide the dispute on merits.

Award

The Permanent Lok Adalat's award shall be final and binding on all the parties.

Limitations:

- **Limited Jurisdiction:** Their jurisdiction is restricted to specific types of cases related to public utility services.
- **Mandatory Conciliation:** In some cases, the mandatory pre-litigation requirement might delay the resolution process.
- **Lack of Awareness:** Public awareness about Permanent Lok Adalats may be limited, leading to underutilization of this resource.

Way Forward

- **Awareness and Outreach:** There is a need to increase public awareness about Lok Adalat and its benefits for dispute resolution.
- **Need of Specialized Lok Adalats:** There are various types of disputes, such as family disputes, commercial disputes or environmental disputes. There should be a creation of specialised Lok Adalats.
- **Training and Capacity Building:** There should be training programs for legal professionals, including judges and lawyers, to enhance their understanding of Lok Adalat procedures and principles.
- **Monitoring and Evaluation:** There should be a mechanism for monitoring and evaluating Lok Adalat processes to ensure efficiency, fairness, and adherence to legal standards.
- **Incorporate Mediation Techniques:** Integrate mediation techniques into Lok Adalat proceedings, fostering a more collaborative approach to dispute resolution.
- **Incentivize Participation:** There should be incentives to participate in Lok Adalat, such as reduced filing fees, faster resolution times, or recognition of cooperation in legal proceedings.
- **Public-Private Partnerships:** While supporting the Lok Adalat initiative partnerships should be explored with the private organisations to enhance its reach and effectiveness.

The Permanent Lok Adalat establishment has proved to be a very useful and effective mechanism, as it acts as a friendly system not only for the litigants but for the judicial fraternity as well, as it lifts off the burden imposed on the system. It serves as a crucial platform against settlements by ordinary men and women seeking a remedy against their malpractices without undergoing the exhaustive and expensive procedures of a traditional court.

IGNITE YOUR MIND

Imagine Lok Adalats as champions of dispute resolution. How do these champions apply their unique skills to fix problems, and why are they vital for people seeking justice?

FAMILY COURTS

Background

Various organisations, associations, and individual women had urged from time to time that Family Courts should be set up for the settlement of family disputes, where it was emphasised that conciliation would be socially desirable results and adherence to rigid rules of procedure and evidence should be eliminated.

Thereafter, The **Law Commission in its 59th report (1974)**- emphasised in dealing with disputes that were concerned with the family, so it adopted an approach that was radically different from the ordinary civil proceedings and it would make reasonable efforts for settlement before the commencement of the trial. To do this, The **Code of Civil Procedure** was **amended in 1976** for matters related to family and have special procedures in suits or proceedings.

Establishment and Purpose

Family courts were established under the **Family Courts Act 1984**, with the **primary objective** of:

- Promoting **conciliation and reconciliation** in family disputes.
- Securing **speedy and efficient** settlement of family disputes.
- Providing a **less formal and more user-friendly environment** for resolving family matters
- **Experts and expeditious disposal** are two main factors for the establishment of such a court.
- It helps to provide an **inexpensive remedy**.

Salient features of the Family Courts Act, 1984

- The State Governments can establish Family Courts in consultation with the High Courts.
- If the population exceeds one million, then the State Government has an obligation to set up a Family Court in every city or town.
  - In other areas also the State Governments can set up Family Courts if it deem necessary.

- **It has exclusive jurisdiction over the matters related to**
  - Matrimonial relief (including nullity of marriage, judicial separate divorce)
  - Restitution of conjugal rights,
  - Declaration as to the validity of marriage
  - The matrimonial status of any person
  - Property of the spouses or of either of them
  - Declaration as to the legitimacy of any person
  - Guardianship of a person or the custody of any minor
  - Maintenance of wife, children and parents.
- **During the first instance:** the Family Court tries for reconciliation or a settlement between the parties to a family dispute.
  - At this stage, the proceedings will be informal and rigid rules of procedure shall not apply.
- **During the conciliation stage:** It provides for the association of social welfare agencies, counsellors, etc.
- The Court in the interest of the justice can provide a legal expert to seek assistance.
- The rules of evidence and procedure are simplified so as to deal effectively with a dispute.
- It provides for only one right of appeal which shall lie to the High Court.

Appointment of Judges

The State Government, with the concurrence of the High Court, appoints one or more persons to be the Judge or Judges of a Family Court.

Association of Social Welfare Agencies

The State Government provides a Family Court that provides -

- Organizations engaged in social welfare.
- Professionals engaged in promoting the welfare of the family.
- Persons working in the field of social welfare.
- Persons associated with a Family Court would enable it to exercise its jurisdiction more effectively.

Need for the Amendment

- **Currently, there are 715 Family Courts that are established and functioning in various States and Union territories.**
- However, for states such as Himachal and Nagaland, the Central Government notified not to apply the said Act to these states.
  - Lack of jurisdiction issues of Family Courts in the State of Himachal Pradesh has been challenged before the High Court of Himachal Pradesh.
- The family courts in Nagaland state have also been operating without any legal authority since 2008.

Family Courts (Amendment) Bill 2022

It seeks to provide for the establishment of Family Courts in the State of Himachal Pradesh with effect from 2019 and for Nagaland with effect from 2008.

It seeks to insert a new Section 3A to retrospectively validate all actions under the said Act taken by these two states.

The orders of appointment of a family court judge, and the posting, promotion or transfer of such a judge under the Act.

Significance

- **Disputes Settlement:** It gives effect by reconciliation or settlement of parties for the families.
  - **Conciliation stage:** It provides association for the social welfare agencies' counsellors, and also gives services of medical and welfare experts.
- **Provides assistance as a legal expert:** The Court provides assistance of legal experts in the interest of justice.
  - It provides inexpensive remedies and flexibility for the conduct of proceedings.
- **Simplification in addressing disputes:** The disputes are dealt with in a simplified manner by the rules of evidence and procedure while addressing.
  - The family courts have the authority to establish their own procedures for settlement through rules developed in consultation with the High Courts.
- **Multidisciplinary Approach:** For fair trial and the expeditious resolution of cases at a low cost, it takes a multidisciplinary approach, which helps to reduce and simplify legal formalities.
- Thus, expertise and expeditious disposition are two major factors in establishing such a court.

Criticism

- **The term Family is not defined:** The term "family" has not been defined by the Act, which has resulted in various matters arising from economic consequences.
  - It becomes very difficult for a common man to understand the family court provisions which follow Code of Civil Procedure in its suits or proceedings.
- **Restriction of Cases:** It only hears cases related to marriage, maintenance, and divorce.
- **Transfer or change of authorities:** The counsellors and other authorities keep changing which deteriorates the situation.
  - If change of counsellor happens for a particular suit then it becomes difficult for the parties, particularly women to convey their problems again.

- **Few states established Family Courts:** Although it is mandatory for state governments to establish family courts with consultation with the High Court in cities where the population is over a million, only a few states have established it.
- **Prohibition of lawyers in Court:** The act prohibits the presence of lawyers in a family court which becomes difficult for the average person to understand the court's procedure and formalities.
  - People rely heavily on clerks and peons of the Court due to this prohibition.
- **Failed to provide justice while ensuring gender neutrality:** The act follows a conciliatory approach, which ensures quick relief to the parties, but it failed to provide gender-neutral justice.

Recommendations of the National Commission for Women

- Simplification of legislation so that it can be easily understood by a layperson.
- The aid can be provided by the NGOs and other charity organisations while carrying out their tasks.
- Frequent transfer of Counsellors should be stopped and adequate training provided.
- Holistic view should be seen while handling cases for women, as it should not only see where her husband resides.
- Maintenance should be provided for women's dwellings.

In Indian society, the role of family has huge, significance, and if any issues or disputes arise, then the role of the Family Courts becomes crucial in terms of their perspective and intended implementation. Its success appears to be dependent on various factors, such as counselling, conciliation, legal infrastructure, and the mode of operation by which it provides supportive services.

GRAM NYAYALAYAS

Introduction

Gram Panchayats or Nyaya Panchayats are the village courts where disputes are settled between villagers. Village heads such as Gram Pradhan, Sarpanch and other authorities discuss the issues and accordingly, the decision is provided as per the issues. Its existence has been in one form or another since before independence.

Background

- **Role of village elders:** In ancient India, the communities settled their disputes among themselves, and this was done by village elders or respected persons known for their integrity and honesty.
- **Arbitration and Conciliation Act, 1996:**This act provided procedures under which complex procedures of courts should be avoided and also which are expensive and out of the reach of village communities.
- **Slow delivery of justice by Lok Adalat:** As it is presided over by retired judges, which were not effective in reaching speedy justice to village areas at appropriate times.
  - Hence it became crucial for this reason that it is considered important to devolve some judicial functions to a village-level body to ensure speedy justice and reduce expenses for the formal judiciary, which spends time and money handling a large number of disputes of lesser gravity.

Hence, **the Gram Nyayalayas Act, 2008** has been enacted to provide for the establishment of Gram Nyayalayas at the block level in the country, as the lowest tier of the judiciary for rural areas.

Reasons for the establishment of Gram Nyayalaya

- **Obligation under the Constitution:** As per **Article 39A** of the Constitution, it directs the state to ensure that the operation of the legal system promotes justice on a basis of equal opportunity and shall provide free legal aid to ensure opportunities for securing justice.
- **Strengthening the Judicial System:** It would help the government to take various measures for strengthening the judicial system, and also simplifying the procedural laws, incorporating various alternative dispute resolution mechanisms such as arbitration, conciliation, and mediation.
- **Law Commission of India in its 114th Report:** It recommended the establishment of Gram Nyayalayas so that
  - More humane and accessible justice delivery to the most marginalized sections
  - Case pendencies can be reduced to 50% in subordinate courts.
  - Workload can be reduced on higher judiciaries.
- Hence, **The Gram Nyayalayas Act, 2008** is **broadly based** on the **recommendations of the Law Commission**.
- **Objectives to be achieved:** Setting up Gram Nyayalayas in the rural areas helps to bring speedy, affordable, and substantial justice.

Salient features of Gram Nyayalayas Act,2008

It was enacted at the grassroots level to provide justice to the citizens at their doorsteps and also to ensure that opportunities for securing justice are not denied to any citizen due to social, economic or other disabilities.

- **Composition**
  - **The Gram Nyayalaya shall consist of:**
    - **Court of Judicial Magistrate**

- **Presiding officer (Nyayadhikari):** appointed by the State Government in consultation with the High Court.

- **Qualification**
  - **Court of Judicial Magistrate:** He should be First class Judicial Magistrate.
  - **Nyayadhikari:** While appointing Nyayadhikari, adequate representation from the members of the Scheduled Castes, the Scheduled Tribes, women and other classes or communities as may be specified by notification, by the State Government.
  - They are judicial officers and will be drawing the same salary and same powers as First Class Magistrates working under High Courts.
- **Salary and other allowances:** It is payable to and the other terms and conditions of service of a Nyayadhikari shall be such as may be applicable to the Judicial Magistrate of the first class.
- **Level of Establishment**
  - Every Panchayat at intermediate level
  - A group of contiguous Panchayats at intermediate level in a district
  - If Panchayat is not available at intermediate level in any State, then for a group of contiguous Panchayats.
- **Location:**
  - At the headquarters of the intermediate Panchayat, the seat of the Gram Nyayalaya will be located and they will go to villages, work there and dispose of the cases.
- **Jurisdiction**
  - It has powers of both Criminal and Civil Courts. It can try criminal cases, civil suits, claims or disputes which are specified In the First Schedule and the Second Schedule of the Act.
    - The Gram Nyayalaya shall follow summary procedure in criminal trials. It shall deliver a copy of its judgement immediately to both the parties free of cost.
  - Both the governments, i.e., Central and State Governments have power to amend the First Schedule and the Second Schedule of the Act.
    - **Civil Court:** With certain modifications and shall follow the special procedure as provided in the Act.
  - **The Nyayadhikari shall not preside over the proceedings of a Gram Nyayalaya**
    - In which he has any interest or,
    - Otherwise involved in the subject matter of the dispute.
    - Related to any party to such proceedings and in such a case.
  - The Nyayadhikari shall refer the matter to the District Court or the Court of Session as the case may be for transferring it to any other Nyayadhikari.

Methods to settle disputes

- It settles the disputes by bringing conciliation between the parties and for doing this, it makes use of the conciliators to be appointed for this purpose.
  - It is **not bounded by the rules of evidence** provided in the Indian Evidence Act, 1872.
  - It shall be **guided by the principles of natural justice,** and subject to any rule made by the High Court.
- **Criminal cases appeals:** lie with the **Court of Session,** which shall be heard and disposed of **within a period of six months** from the date of filing of such appeal.
- **Civil cases appeals:** lie with the **District Court** which shall be heard and disposed of **within a period of six months** from the date of filing of the appeal.
- **Awards:** It deems to be a decree and to avoid delay in its execution. It follows summary procedure for its execution.
- **Filing of Application:** A person accused of an offence may file an application for plea bargaining.
- **Language:** The proceedings before the Gram Nyayalaya and its judgement will be done in one of the official languages of the State other than the English language.

Reason for poor Functioning of Gram Nyayalaya

- **Overlapping jurisdiction:** Over the years many states have established regular courts at the Taluka level thereby lessening the need for an additional institution of gram nyayalaya.
- **Lack of attention:** Despite Rs 1400 crore allocations by the central government, Gram Nyayalayas have simply been side-lined by most state governments in their pecking order of policy priorities.
- **Funds:** The slow pace of fund utilization under the Scheme due to the lack of proposals from the States for setting up Gram Nyayalayas.
- **Lack of Human resources:** Shortage of judicial officers for Gram Nyayadhikaries post, Non-availability of notaries, stamp vendors, etc., have hampered the progress.
- **Lack of clarity:** Whether Gram Nyayalayas gives an additional option for quick dispute resolution or not is doubtful as alternative forums such as labour courts, and family courts are already available.
- **Lack of coordination:** Lack of coordination between HCs and state governments results in gram nyayalayas functioning on a part-time basis (weekly once or twice) instead of adding to the existing court.

- **Lack of awareness:** In general awareness among all stakeholders i.e. litigants, lawyers, and police officers involved in case resolutions remain extremely limited

Way Forward

- **Remove ambiguity in the act:** Its jurisdiction may be redefined, and the act can be modified, to remove any ambiguity about the Gram Nyayalayas'.
- **Role of Intermediate-level for easy access to public:** If permanent establishment of Gram Nyayalayas at intermediate-level takes place then it will be easily accessible for the general public.
  - It will also help to take appropriate actions to raise awareness among various stakeholders, such as revenue officers and police officers etc.
- **Segregation of the facilities with proper security:** There should have separate facilities and security for the works of the Gram Nyayalaya as well as accommodation of the Gram Nyayadhikari, and other staff.
- **Role of Local language to be increased:** To carry out any procedures and training for Gram Nyayalayas, it should be carried out in the local language.
- **Role of degree for better connection with the public:** The officers who are serving in this service, if they want to have better understanding of the public, then they should have a social work degree along with the law degree.

This Act envisages access to justice for the citizens at their doorstep, and at the same time, it ensures that opportunities are not denied. Although it has many challenges and shortcomings, it plays a positive role in reaching marginalised sections of society to provide for the poor. It has huge potential to reduce the pendency of cases at higher levels. The need of the hour is to make efforts to revamp not only the organisational but also the jurisdictional aspects of Gram Nyayalayas.

CONSUMER PROTECTION ACT: EMPOWERING INDIAN CONSUMERS

The Consumer Protection Act (CPA) is a crucial piece of legislation in India that aims to protect the interests of consumers. Enacted in 1986, the Act has been instrumental in empowering consumers and ensuring fair market practices.

Objectives

The primary objectives of the CPA are to:

- Provide consumers with the right to information, safety, choice, and redressal.
- Protect consumers from unfair trade practices and exploitation.
- Promote ethical practices in the marketplace.
- Set up a mechanism for redressal of consumer grievances.
- Create awareness among consumers about their rights and responsibilities.

Rights and Responsibilities

The CPA grants several essential rights to consumers, including:

- Right to be informed about the quality, quantity, potency, purity, standard, and price of goods and services.
- Right to be protected from unfair trade practices such as misleading advertisements, false promises, and defective goods.
- Right to choose from a variety of goods and services.
- Right to seek redressal for any grievances related to goods or services purchased.

In addition to rights, the CPA also outlines **specific responsibilities for consumers**, including:

- Exercising due diligence while making purchases.
- Reading and understanding the terms and conditions of any contract.
- Collecting and maintaining relevant receipts and documents.
- Filing complaints in a timely manner.

Enforcement Mechanisms

The CPA establishes a three-tier system for redressal of consumer grievances:

- **District Consumer Disputes Redressal Forums (DCDRFs):** Handle cases where the value of goods or services does not exceed ₹ 50 lakhs.
- **State Consumer Disputes Redressal Commissions (SCDRCs):** Handle cases where the value of goods or services exceeds ₹ 50 lakhs but does not exceed ₹ 2 crore.
- **National Consumer Disputes Redressal Commission (NCDRC):** Handles cases where the value of goods or services exceeds ₹ 2 crore.

These forums are empowered to provide various remedies to consumers, such as:

- Refund of the purchase price.
- Replacement of defective goods.
- Compensation for damages.
- Punishment for unfair trade practices.

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION (NCDRC)

The National Consumer Disputes Redressal Commission (NCDRC) is a vital institution established under the Consumer Protection Act, 1986, to provide consumers with an accessible and efficient forum for resolving disputes with businesses. It serves as the apex body in the three-tier consumer dispute redressal system in India.

Composition

- The National Commission shall consist of a President and not less than four or not more than such number of members as may be prescribed.
  - The Commission is headed by a sitting or a retired Judge of the Supreme Court of India or a sitting or a retired Chief Justice of a High Court
- Accordingly, in 2020, the central government has prescribed that the National Commission shall consist of a President and not less than four or not more than eleven members.
  - Further, out of these eleven members, at least one member shall be a woman.

Key Functions

- Hear appeals against the orders of State Consumer Disputes Redressal Commissions (SCDRCs) where the value of goods or services involved exceeds ₹ 2 crore.
- Direct review of cases from SCDRCs where the NCDRC considers it necessary to do so in the interest of justice.
- Issue guidelines and directions to SCDRCs and District Consumer Disputes Redressal Forums (DCDRFs) to ensure uniformity in their decisions.
- Undertake research and study on consumer protection issues.
- Organize training programs for judges and members of DCDRFs and SCDRCs.
- Publish reports and recommendations on consumer protection.

STATE CONSUMER DISPUTES REDRESSAL COMMISSION (SCDRC)

The State Consumer Disputes Redressal Commission (SCDRC) plays a crucial role in the three-tier consumer dispute redressal system in India. Established under the Consumer Protection Act, 1986, it serves as the intermediate tier between District Consumer Disputes Redressal Forums (DCDRFs) and the National Consumer Disputes Redressal Commission (NCDRC).

Composition

- Headed by a sitting or retired Judge of a High Court.
- Comprises other members, including retired Judges of District Courts and experts in relevant fields, such as consumer affairs and law.

Key Functions

- Hear appeals against the orders of DCDRFs where the value of goods or services involved, exceeds ₹ 50 lakhs but does not exceed ₹ 2 crore.
- Receive complaints directly from consumers in cases where the value of goods or services involved, exceeds ₹ 50 lakhs.
- Provide guidance and assistance to DCDRFs within its jurisdiction.
- Make recommendations to the government on improving consumer protection measures.
- Organize training programs for judges and members of DCDRFs.

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION (DCDRC)

The District Consumer Disputes Redressal Commission (DCDRC) is the first point of contact for consumers seeking redressal for grievances against businesses in India. Established under the Consumer Protection Act, 1986, it forms the foundation of the three-tier consumer dispute redressal system.

Composition

- Presided over by a judicial member, typically a retired Judge of a District Court.
- Comprises two other members, one with experience in consumer affairs and another with expertise in the field relevant to the complaint.

Key Functions

- Receive and hear complaints from consumers regarding unfair trade practices, defective goods or services, and other consumer-related issues.
- Adjudicate disputes and provide remedies to consumers, including orders for refund, replacement, compensation, and removal of deficiency.

- Promote awareness about consumer rights and responsibilities.
- Provide guidance and assistance to consumers in filing complaints and pursuing their cases.
- Make recommendations to the government on improving consumer protection measures.

Impact

The CPA has had a significant impact on the Indian marketplace. It has helped to:

- Reduce the number of cases of consumer fraud and exploitation.
- Increase awareness among consumers about their rights.
- Empower consumers to make informed choices.
- Promote competition and fair pricing in the market.

Challenges

Despite its achievements, the CPA also faces certain challenges, including:

- Low awareness among consumers about their rights and the redressal mechanisms available.
- Backlog of cases in consumer forums, leading to delays in resolving grievances.
- Limited resources for consumer forums, impacting their efficiency.
- Lack of effective enforcement mechanisms to deter unfair trade practices.

COMPARISON OF THE 1986 ACT WITH THE 2019 ACT

Feature	Consumer Protection Act, 1986	Consumer Protection Act, 2019
Scope	❑ Limited to protection against unfair trade practices and defective goods/services	❑ Includes online transactions, e-commerce, product liability, unfair contracts
Consumer Rights	❑ Six basic rights: safety, information, choice, fair hearing, representation, redressal	❑ Adds right to be heard in product liability cases and protection against unfair contracts
Redressal Mechanisms	❑ Three-tier system with DCDRFs, SCDRCs, and NCDRC	❑ Retains the three-tier system, introducing online complaint filing, simplified procedures, and higher monetary limits
Penalties	❑ Limited penalties for unfair trade practices and defective goods/services	❑ Stricter penalties, including imprisonment and higher fines, for unfair trade practices, misleading advertisements, and violation of consumer rights

Way Forward

To address these challenges and continue to strengthen consumer protection in India, several initiatives are being considered, including:

- Increased public awareness campaigns to educate consumers about their rights.
- Streamlining the Consumer Dispute Redressal System to improve efficiency and reduce delays.
- Providing adequate resources to consumer forums to enable them to function effectively.
- Strengthening enforcement mechanisms to deter unfair trade practices and punish offenders.

By implementing these initiatives, the Consumer Protection Act can continue to effectively protect the rights of consumers and promote a fair and equitable marketplace in India.

CONCLUSION

Alternate Dispute Resolution mechanisms offer valuable alternatives to traditional litigation, providing parties with diverse options for resolving conflicts. The choice of ADR method depends on the nature of the dispute, the preferences of the parties involved, and the desired outcomes.

Tribunals

25

INTRODUCTION

Tribunals in India are judicial or quasi-judicial bodies that are established by law to deal with specific types of disputes. They are intended to provide faster and more efficient adjudication than traditional courts, as well as expertise on certain subject matters such as resolving administrative or tax-related disputes.

The tribunals perform various functions like adjudicating disputes, determining rights between contesting parties, making an administrative decision, and reviewing an existing administrative decision.

The term '**Tribunal**' is derived from the word '**Tribunes**', which denotes '**Magistrates of the Classical Roman Republic**'.

Tribunal is referred to as the office of the 'Tribunes' i.e., a Roman official under the monarchy and the republic with the function of protecting the citizen from arbitrary action by the aristocrat magistrates.

The Tribunal **can be any person or institution** who has the authority to judge, adjudicate on, or to determine claims or disputes. The **Supreme Court** held that **"the tribunals, being quasi-judicial bodies, should have the same level of independence from the executive as the judiciary"**.

SALIENT FEATURES OF TRIBUNALS IN INDIA

Subject expertise	❑ The most significant part of tribunals is that they are composed of members who have specialised expertise in the subject matter over which they have jurisdiction.
Not bound by Civil Procedure Code (CPC)	❑ They are not bound by the strict rules of procedure and evidence set out in the CPC unlike seen in traditional Courts.
Principles of natural justice	❑ In India tribunals follows the principle of natural justice, which requires that all parties to a legal proceeding be given a fair and impartial hearing and that no person should be a judge in their own cause
Quasi-judicial powers	❑ They can hear evidence, examine witnesses, make findings of fact, apply the law to the facts, and make binding decisions.
Time-bound resolution	❑ The adjudicatory process in tribunals is usually faster than the traditional court system, which helps to resolve disputes more quickly and efficiently.
Appellate authority	❑ The tribunal decisions can be appealed to a higher court. The decision of tribunals in the first instance can be appealed to the appellate authority and, thereafter, to the High Courts and/or Supreme Court.

CONSTITUTIONAL PROVISIONS

Original Constitution did not contain any provisions with respect to tribunals. Thereafter, **the 42nd Amendment Act of 1976 added a new Part XIV-A to the Constitution**.

This part is entitled as 'Tribunals' and consists of only two Articles:

- ❑ **Article 323A** deals with administrative tribunals and
- ❑ **Article 323B** deals with tribunals for other matters.

The difference between Article 323 A and 323 B differs in the following aspects:

Article 323A	Article 323B
❑ The Central Administrative Tribunal had been established under Article 323 -A of the Constitution for adjudication of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or other authorities.	❑ It contemplates the establishment of certain matters such as taxation, foreign exchange, and land reforms contemplates the establishment of tribunals for certain other matters.

❑ It establishes tribunals only by Parliament	❑ It establishes tribunals by both Parliament and state legislature.
❑ There is absence of hierarchy for tribunals ❑ Generally there is only one tribunal for the Centre and one for each state or two or more states may be established.	❑ Hierarchy of tribunals may be created.

Notes: The Supreme Court in the **L.Chandra Kumar case (1997)** declared that two articles, that is, Article 323A and 323B which excluded the jurisdiction of the High Courts and Supreme Court as unconstitutional. Therefore, the judicial remedies are now available against the orders of these tribunals.

NEED OF TRIBUNALS

- **Reduce the workload of the Supreme Courts and High Courts:** As of June 6, 2021, there are 91,885 cases pending for more than 30 years in different High Courts of India. As of May 1, 2021, there are 67,898 pending cases in the Supreme Court. Tribunals can help reduce the burden on the courts by resolving disputes in a timely manner.
- **Specialisation and expertise:** Some disputes require specialised knowledge and technical skills to adjudicate, such as those related to taxation, intellectual property, environment, consumer protection, etc.
  - Tribunals can provide such expertise and ensure that the decisions are based on sound reasoning and evidence.
  - Tribunals can also ensure uniformity and consistency in the application of laws and policies in a particular domain.
- **Accessibility and affordability:** Tribunals can make justice more accessible and affordable for the litigants by simplifying the procedures and reducing the costs involved in litigation.

EVOLUTION OF TRIBUNAL SYSTEM IN INDIA

1941-The Income Tax Appellate Tribunal was established as the first Tribunal in India.
The objective was to reduce the workload of courts, expedite adjudication of disputes, and build expertise on tax matters

1966-The 1st ARC Report recommended that the central government should set up Civil Services Tribunals at the national level and state levels.
These Tribunals would be the final appellate authority for adjudicating on matters related to dismissal, removal from service, and reduction in rank of civil servant

1974- The Sixth Law Commission (1974), recommend setting up a separate high-powered tribunal and commission for adjudication of matters in High Courts. This was aimed at reducing arrears of cases in the High Courts

1976-The Swaran Singh Committee noted that the High Courts were burdened with service cases by public servants. It (i) administrative tribunals to adjudicate on matters related to service conditions, (ii) an all-India Appellate Tribunal for matters from labour courts and industrial tribunals, and (iii) tribunals for deciding matters related to various sectors.

1980-These include the Central Administrative Tribunal for administrative matters, the Securities Appellate Tribunal to hear appeals against decisions of financial sector regulators, an Appellate Tribunal where decisions of the Central Film Certification Board could be challenged, and an Appellate Tribunal for Electricity to hear tariff issues

2017-The Finance Act, 2017 reorganised the tribunal system by merging tribunals based on functional similarity.

2021-The Tribunals Reforms (Rationalisation and Conditions of Service) Bill, 2021 introduced in Lok Sabha. They abolish 9 tribunals and transfer their functions to existing judicial bodies (mainly High Courts).

DIFFERENCE BETWEEN COURT AND TRIBUNAL

Court	Tribunal
❑ It is a part of the traditional judicial system where judicial powers are derived from the state.	❑ It acts as an agency created by the statute and invested with judicial power.

❑ The Civil Courts have judicial power to carry out all suits of a civil nature unless the cognizance is expressly or impliedly barred.	❑ Tribunals have the power to try cases of special matter which are conferred on them by statutes.
❑ Tenure, terms and conditions of the services of the members i.e., Judiciary is independent of Executive	❑ Tenure, terms and conditions of the services of the members of Administrative Tribunal are entirely in the hands of the Executive.
❑ A judge of a court of law must be impartial, who is not interested in the matter directly or indirectly.	❑ An Administrative Tribunal may be a party to the dispute to be decided by it.
❑ A court of law is bound by all the rules of evidence and procedure.	❑ An Administrative Tribunal is not bound by rules of law but bound by the principles of natural Justice.
❑ The concerned Courts must decide all questions **objectively** on the basis of evidence and materials.	❑ The Administrative Tribunal may decide questions by taking into account departmental policy, and the decisions of Administrative Tribunal may **be subjective rather than objective.**
❑ A court of law can declare law ultra vires.	❑ Administrative Tribunal cannot do so

STRUCTURE OF TRIBUNAL SYSTEM

Administrative Tribunals (Article 323A)

1) It empowers the Parliament to provide for the establishment of administrative tribunals for the adjudication of disputes relating to recruitment and conditions of service of persons appointed to public services of the Centre, the states, local bodies, public corporations and other public authorities.

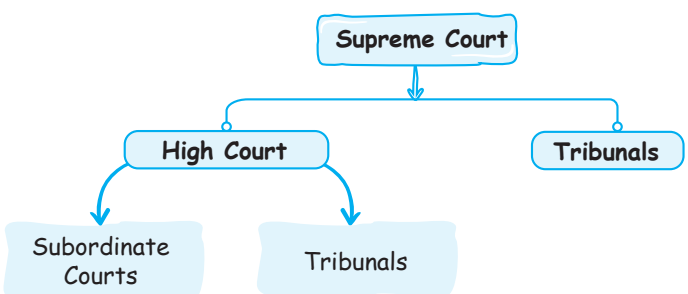


Fig. 25.1: Structure of Tribunal System

2) This article enables the Parliament to take away the adjudication of disputes relating to service matters from the civil courts and the high courts and place it before the administrative tribunals.

In pursuance of Article 323A, the Parliament has passed the **Administrative Tribunals Act in 1985**. The act authorises the Central government to establish one Central administrative tribunal and the state administrative tribunals.

This act also opened a new chapter by providing speedy and inexpensive justice to the aggrieved public servants.

Characteristics of Administrative Tribunals

- ❑ Administrative Tribunal is a creation of a statute.
- ❑ An Administrative Tribunal is vested in the judicial power of the State and performs **quasi-judicial functions** which are different from pure **administrative functions.**
- ❑ It is required to act openly, fairly and impartially.
- ❑ It is bound to act judicially and follows the principles of **natural justice.**
- ❑ It is **not bound** by the strict rules of **procedure and evidence as prescribed by the civil procedural court.**

TYPES OF TRIBUNAL

Administrative Tribunal (Article 323A)

Central Administrative Tribunal (CAT)

The Central Administrative Tribunal (CAT) was established in 1985 as per the provisions of the **Administrative Tribunals Act of 1985** with its principal bench at Delhi and additional benches in different states. These benches also hold circuit sittings at other seats of high courts.

Jurisdiction:

It exercises original jurisdiction in relation to recruitment and all service matters of public servants covered by it.

- ❑ Its jurisdiction extends to the all-India services, the Central civil services, civil posts under the Centre and civilian employees of defence services.
- ❑ It does not cover - the members of the defence forces, officers and servants of the Supreme Court and the secretarial staff of the Parliament are not covered by it.

Strength:

- It is a multi-member body which consists of a chairman and members.
  - Earlier, the CAT consisted of a Chairman, Vice Chairman and members.
  - But from 2006, the Administrative Tribunals (Amendment) Act, 2006 the provision for the Vice-Chairman was removed.
  - The act empowered the administrative tribunals to exercise the same power as the High Court with respect to contempt of court. The Bill brings the administrative tribunals under the jurisdiction of the High Courts and abolishes the tribunals' power to punish for contempt of court.
- At present, the sanctioned strength is of 70 Members including Chairman (35 Judicial and 35 Administrative).

Appointment:

- They are drawn from both judicial and administrative streams and are appointed by the President.
- They hold office for a term of five years or until they attain the age of 65 years in case of Chairman and 62 years in case of members, whichever might be earlier.
- The appointment of members in CAT is made on the basis of recommendations of a high powered selection committee chaired by a sitting Judge of the Supreme Court who is nominated by the Chief Justice of India.
  - After obtaining the concurrence of Chief Justice of India, appointments are made with the approval of Appointments Committee of the Cabinet (ACC).
- **Principles:** It is not bound by the procedure laid down in the Civil Procedure Code of 1908, but guided by the principles of natural justice.
- **Fee Requirement:** Only a nominal fee of ₹50 is to be paid by the applicant and it appears either through person or through a lawyer.
- **Appeals to be made:** Initially, appeals against the orders of the CAT were made only in the Supreme Court and not in the high courts. However, in the **L.Chandra Kumar case (1997),** the Supreme Court declared
  - This restriction on the jurisdiction of the high courts was unconstitutional, holding that judicial review is a part of the basic structure of the Constitution.
  - It also laid down that appeals against the orders of the CAT shall lie before the division bench of the concerned high court.
  - Consequently, the now aggrieved public servant has to first approach the concerned high court, before approaching the Supreme Court directly against an order of the CAT.

Establishment of SATs

The SATs have been set up in the various states of Andhra Pradesh, Himachal Pradesh, Odisha, Karnataka, Madhya Pradesh, Maharashtra, Tamil Nadu, West Bengal and Kerala.

However, the Madhya Pradesh, Tamil Nadu and Himachal Pradesh Tribunals have since been abolished. However, Himachal Pradesh re-established the SAT and the Tamil Nadu government also requested now to re-establish the same.

The Haryana government has requested to establish the SAT for their state.

On the other hand, the Odisha government submitted a proposal for abolition of the Odisha Administrative Tribunal.

State Administrative Tribunals (SATs)

The Administrative Tribunals Act of 1985 empowers the Central government to establish State Administrative Tribunals (SATs) on the specific request of the concerned state governments.

- Similar to the CAT, the SATs also exercises original jurisdiction in relation to recruitment and all service matters of state government employees.
  - The chairman and members of the SATs are appointed by the President after consultation with the governor of the state concerned.

Joint Administrative Tribunals (JAT)

- The Administrative Tribunals Act of 1985 also made a provision for setting up Joint Administrative Tribunal (JAT) for two or more states.
- A JAT exercises all the jurisdiction and powers exercisable by the administrative tribunals for such states.
- The chairman and members of a JAT are appointed by the President after consultation with the Governors of the concerned states.

Tribunals for Other Matters (Article 323B)

Within the Constitution, **Article 323B** gives authority to the Parliament and the State Legislatures for the establishment of tribunals for the adjudication of disputes.

Tribunals for other matters related to the following matters include:

- Taxation
- Foreign exchange, import and export
- Industrial and labour
- Land reforms
- Ceiling on urban property

- Elections to Parliament and state legislatures
- Food stuffs
- Rent and tenancy rights

IGNITE YOUR MIND

Indian courts are clogged with large backlogs and part of the reason for the problem is that cases take a very long time to move through the courts. Let's suppose Tribunals were special helpers in our legal system, what kind of problems do you think they would help solve? How can these special helpers make sure everyone is treated fairly and their concerns are heard?

Water Disputes Tribunals

The Parliament enacted **Inter-State River Water Disputes (ISRWD) Act, 1956** which provide for the formation of various **Water Disputes Tribunal** for adjudication of disputes relating to waters of inter-State rivers and river valleys.

Armed Forces Tribunal (AFTs)

- It was established under the **Armed Forces Tribunal Act, 2007** and acts as a military tribunal in India**.**
- It provides power for the adjudication or trial by AFT of disputes and complaints with respect to commission, appointments, enrolments and conditions of service
  - For the persons who are subjected to the **Army Act, 1950, The Navy Act, 1957 and the Air Force Act, 1950.**
- Besides the **Principal Bench in New Delhi,** It has regional Benches at other places such as Chandigarh, Lucknow, Kolkata, Guwahati, Chennai, Kochi, Mumbai and Jaipur.
- **Each Bench comprises a Judicial Member and an Administrative Member.**
  - The **Judicial Members** are **retired High Court Judges**
  - **Administrative Members** are **retired Members** of the **Armed Forces** who earlier had the rank of **Major General/ equivalent** or above for a period of three years or more.
    - Other than above two**, Judge Advocate General (JAG),** who have held the appointment for at least one year are also entitled to be appointed as the Administrative Member.

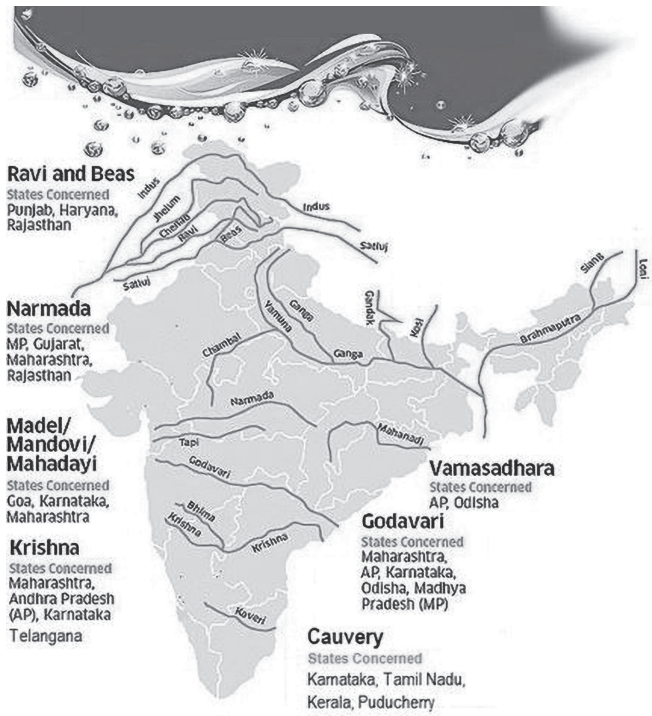


Fig. 25.2: Tribunal setup under ISRWD Act, 1956

National Green Tribunal (NGT)

- Earlier **National Environment Tribunal Act, 1995** and **National Environment Appellate Authority Act, 1997** were created to deal with environmental matters. However, it was felt inadequate to deal with ever increasing environmental issues.
- In 2003 the 186th Report of the Law Commission suggested multi-faceted Courts with judicial and technical inputs referring from the practices of environmental Courts in Australia and New Zealand.
  - Consequently, NGT was formed as a special fast-track, quasi-judicial body composed of judges and environment experts to ensure expeditious disposal of cases.
- **National Green Tribunal Act 2010** established the National Green Tribunal in 2010 as a **statutory body.**
- **Aims and Objectives -** For effective and expeditious disposal of cases related to **environmental protection** and **conservation of forests and other natural resources.**
  - It also helps to ensure enforcement of any legal right related to the environment and to give relief and compensation for damages to persons and property.
- It has been mandated that disposal of applications or appeals has to be done **within 6 months** of filing.

Income Tax Appellate Tribunal

Within the Income Tax Act, 1961 it provides that the Central Government that it shall constitute an Appellate Tribunal which consists of Judicial Members and Accountant members as it thinks fit to exercise the powers and functions conferred on the Tribunal by this Act.

Foreigners Tribunal

- This tribunal acts as a **quasi-judicial body** in India that determines whether a person is or is not a foreigner under **Foreigner's Act 1946.**
- This tribunal was **first set up in 1964 and is unique to the state of Assam.**While for the rest of the country, a foreigner apprehended by the police for staying illegally is prosecuted in a local court and later deported/put in detention centres.
  - This organization has observed that the FTs that determined that the paramount right to citizenship in Assam were often dismissive and also had used derogatory language, controlled their own procedures and applied them in arbitrary ways.
  - It has also called for a **review of the existing legislative regime governing the determination of nationality** in India.

National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT)

The National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT) are two specialised courts in India that deal with matters related to corporate law. The NCLT was established under **Section 408** of the **Companies Act, 2013**, while the NCLAT was established under **Section 410** of the same Act.

National Company Law Tribunal (NCLT)

The NCLT is the first-level tribunal for adjudicating disputes under the Companies Act, 2013. It has jurisdiction over a wide range of matters, including Insolvency and bankruptcy of companies, Winding up of companies, Fraudulent companies, Corporate governance, Secretarial compliance, Mergers and acquisitions, Transfer of shares and voting rights.

The NCLT has a nationwide presence, with benches located in major cities across India. It is composed of both judicial and technical members. Judicial members are retired judges of the High Courts, while technical members are experts in accounting, company law, or other relevant fields.

National Company Law Appellate Tribunal (NCLAT)

The NCLAT is the appellate tribunal for appeals against orders of the NCLT. It has jurisdiction over all matters decided by the NCLT, with the exception of appeals against certain orders of the NCLT that fall under the jurisdiction of the Supreme Court.

The NCLAT is also the appellate tribunal for appeals against orders of the **Competition Commission of India (CCI)** and the **National Financial Reporting Authority (NFRA)**.

The NCLAT has its **headquarters in New Delhi** and has benches located in Mumbai, Chennai, Kolkata, Hyderabad, Ahmedabad, and Bengaluru. It is composed of judicial members and technical members, with a minimum of two judicial members and one technical member sitting on each bench.

Role of NCLT and NCLAT in the Indian Corporate Law Regime

The NCLT and NCLAT play a crucial role in the Indian corporate law regime.

- They provide a specialised forum for resolving corporate disputes,
- Ensuring the efficient functioning of the Indian corporate system, and
- Protecting the interests of stakeholders.
- The NCLT's insolvency and bankruptcy proceedings have been instrumental in addressing the growing problem of corporate failures in India.
- The NCLAT's appellate jurisdiction ensures that parties have an opportunity to challenge NCLT orders and seek justice.
- Their decisions have helped to clarify legal provisions, provide guidance to companies and stakeholders, and promote good corporate governance practices

The NCLT and NCLAT have made significant contributions to the development of the Indian corporate law landscape. The two tribunals are likely to continue to play a central role in shaping the Indian corporate law regime in the years to come.

ADVANTAGES OF TRIBUNALS

- **Flexibility:** It is not restrained by rigid rules under the Civil Procedure Code and the Indian Evidence Act and follows the principles of Natural Justice.
- **Less Expensive:** It is less formal and a faster way to resolve disputes than the traditional court.
- **Technical expertise:** Provision to appoint expert members who play a critical role in the adjudication of matters demanding technical expertise.
- **Legally binding decisions:** It has the same powers as a civil court, viz., issuing summons and allowing witnesses to give evidence. Its decisions are legally binding on the parties, subject to appeal.
- **Relief to Courts:** It gives relief to overburdened ordinary courts of law.

ISSUES FACED BY TRIBUNALS IN INDIA

There are several issues faced by tribunals in India, which includes:

Lack of independence	The independence of tribunals is affected as the Salary, condition of office, and term of members of tribunals are decided by the executive.
Conflict of Interest	Government being one of the main litigants in the tribunals. So there arises conflict of interest in the appointments and removal of members of tribunals.

Overlapping Jurisdiction	❑ Some instances of overlapping jurisdiction of tribunals are such as the Competition Appellate Tribunal (COMPAT) with the National Company Law Appellate Tribunal (NCLT).
Jurisdiction of High Courts	❑ By-passing the jurisdiction of High Courts has been a major criticism against tribunals which has been partly resolved under the **Chandra Kumar Case (1997),** where appeals were allowed in the division bench of High Courts
Pendency	❑ According to the **272nd Law Commission Report**, the pendency figures for the CAT is 44,333 cases.
Persisting Vacancies	❑ The Supreme Court in 2021 noted that the vacancies of 20 presiding officers, 110 judicial members, and 111 technical members were pending across the country in various tribunals.
Administrative concerns	❑ There is non-uniformity in the appointment process, qualification of members,age of retirement, resources, and infrastructure of different tribunals working under different ministries, which lowers the overall efficiency.

TRIBUNALIZATION OF JUSTICE

Tribunals are **quasi-judicial institutions** for speedy and specialised dispensation of justice. After 42nd Constitutional Amendment which incorporated **Articles 323A and 323B**, the number of tribunals has burgeoned at both centre and state level. Further increasing complexities in laws, pendency in the mainstream judiciary, need for subject experts in deciding cases etc have also led to an increased number of tribunals. This trend is being called as Tribunalisation of Justice.

Challenges

- **Separation of power:** Tribunalization is seen as encroachment in judiciary by the government.
- **Devalue the authority of HCS:** The appeals from tribunal go directly to the SC. bypassing High Courts. In this case, SC would have less time and resources for constitutional matters.
- **Rampant Tribunalization:** It has also been seen that various tribunals have been established in regular course without considering need or making any due analysis
- **Costly:** Tribunals lead to justice becoming costly and less accessible as unlike HCS, tribunals are not present in all states.
- **High backlog of cases:** As per the report of the law panel, the top five central tribunals in the country have a combined backlog of over 3.50 lakh cases

Way Forward

As per the SC decision in **R. Gandhi Case,** it is incumbent upon the government that when the existing jurisdiction of a court is transferred to a tribunal, its members should be persons of a rank, capacity and status as nearly as possible equal to the rank, status and capacity of the court.

Moreover, the appointments to members should be done by an impartial and independent selection committee. Further, the administrative support for all Tribunals should be from the Ministry of Law & Justice.

REFORMS FOR BETTER FUNCTIONING OF TRIBUNALS

National Tribunal Commission	❑ The **74th report** of the Parliamentary standing committee on Law recommended the creation of a National Tribunal Commission (NTC) to regulate issues linked with tribunals such as oversee the selection process, set eligibility criteria for appointment, etc.
Timely appointments	❑ It will ensure that appointments to tribunals are made in a timely manner keeping in mind to avoid the delays in justice delivery.
Independence and autonomy	❑ The autonomy can be achieved when the appointment, removal, and terms of service of tribunal members is free from political interference.
Rationalisation of tribunals	❑ Due to the existence of a large number of tribunals in India it has led to duplication of functions and overlapping jurisdictions. So, rationalisation of tribunals could help to streamline their functioning and make them more effective.

TRIBUNAL REFORMS ACT, 2021

The Tribunal Reforms Act, 2021 is a law that aims to rationalise and streamline the functioning of various tribunals in India.

Reasons for Reform

- **Ineffective and overcrowded:** Data analysis over the last three years has revealed that tribunals in various sectors have not necessarily resulted in faster justice delivery, and they also come at a significant cost to the government.

- This prompted the decision to rationalise the operation of tribunals, which began in 2015.

- The Supreme Court recently expressed its dissatisfaction with the functioning of the country's tribunals, citing the fact that several of these important quasi-judicial bodies are understaffed.
  - As the Supreme Court has noted, India now has 16 tribunals, including the National Green Tribunal, the Armed Forces Appellate Tribunal, and the Debt Recovery Tribunal, all of which have crippling vacancies.

Features

- **Finance Act 2017:** The Finance Act of 2017 merged several tribunals based on domain.
  - It also empowered the federal government to issue rules governing the composition of search and selection committees.
- **Qualifications of tribunal members:** Their service terms (such as removal and pay).
  - The measure repeals these provisions of the Finance measure of 2017.
  - The statute includes provisions for selection committee composition and length of office.
- **Search and selection committees:** The Chairperson and Members of the Tribunals shall be selected by the central government based on the recommendations of a Search-cum-Selection Committee.
  - State administrative tribunals will have their own search and selection panels.
  - The central government shall act on the recommendations of selection committees as soon as possible, preferably within three months of the date of the recommendation.
- **Eligibility and term of office:** The act establishes a four-year tenure for tribunal members. It establishes a maximum age of 70 years for the chairperson and 67 years for the other members.
  - The minimum age for appointments is 50 years.
- **Uniform compensation and rules:** The statute establishes uniform pay and rules for search and selection committees across tribunals.
- **Removal of Chairperson or Member of Tribunal:** The Central Government shall, on the recommendation of the Committee, remove from office, in such manner as may be provided by rules, any Chairperson or a Member, who —
  - Has been adjudged as an insolvent
  - Has been convicted of an offence which involves moral turpitude
  - Has become physically or mentally incapable of acting as such Chairperson or Member
  - Has acquired such financial or other interest as is likely to affect prejudicially his functions as such Chairperson or Member
  - Has so abused his position as to render his continuance in office prejudicial to the public Interest
- **Pay and allowances:** The statute specifies that the Chairpersons and Members of the tribunal being disbanded would cease to hold office and will be entitled to compensation equal to three months' pay and allowances for their premature termination.

Issues with the Reform

- The Tribunal Reforms (Rationalisation and Conditions of Service) Ordinance of 2021 was struck down by the Supreme Court two days before the Act was tabled in the Lok Sabha.
  - The Act reinstated the ordinance's provisions that had been overturned by the Supreme Court.
  - All of this was done without even deleting the basis for the Supreme Court's decision.

IGNITE YOUR MIND

Imagine, you had a Tribunal time machine, allowing you to witness a historical case heard by a Tribunal, which case and Tribunal would you choose? How do you think the outcome of that case impacted the legal landscape in its specific area?

- **Undermines independence of the Judiciary:** The 2021 Act abolishes nine vital tribunals and poses a serious danger to judicial independence by granting the government broad authority over key tribunal members' selections, service conditions, wages, and so on.

CONCLUSION

The tribunals have performed an important and specialized role in the justice mechanism of the Indian Judicial system. They had reduced the workload of overburdened courts along with **expedited decisions**. It has **provided a forum** manned by lawyers and experts in the areas of disputes such as environment, armed forces, tax, and administrative issues falling under the jurisdiction of the Tribunal.

Judicial Review, Judicial Activism and Judicial Overreach

26

INTRODUCTION

In India, the Constitution itself confers the power of judicial review on the judiciary i.e. for both the Supreme Court as well as High Courts. Further, the Supreme Court has declared the power of judicial review as a **basic feature of the Constitution** or an element of the basic structure of the Constitution. Therefore, the power of judicial review cannot be curtailed or excluded even by a constitutional amendment.

Other Facts:

- The doctrine of judicial review originated and developed in the USA. It was propounded for the **first time** in the famous case of ***Marbury versus Madison (1803) by John Marshall,*** the then Chief Justice of the American Supreme Court.

MEANING OF JUDICIAL REVIEW

It is the power of the judiciary to examine the constitutionality of legislative enactments and executive orders of both the Central and State governments.

If they are found to be violative of the Constitution (*ultra vires*), then they are declared as illegal, unconstitutional, and invalid by the judiciary. Consequently, they cannot be enforced by the Government.

Classification of Judicial Review

According to **Justice Syed Shah Mohammed Quadri** they can be classified into the following **three categories:**

1. Judicial review of constitutional amendments.
2. Judicial review of legislation of the Parliament and State Legislatures and subordinate legislations.
3. Judicial review of administrative action of the Union and State and authorities under the state.

The Supreme Court has used the power of judicial review in various cases such as:

- **Golaknath case (1967)**
- **Bank Nationalisation case (1970)**
- **Privy Purses Abolition case (1971)**
- **Kesavananda Bharati case (1973)**
- **Minerva Mills case (1980)**

The Supreme Court in 2015 declared both the 99th Constitutional Amendment, 2014 and the National Judicial Appointments Commission (NJAC) Act, 2014 as unconstitutional and null and void.

Importance of Judicial Review

Judicial review is needed for the following reasons:

- To prevent the tyranny of executives and maintain the federal balance.
- For checking the misuse of power by the legislature and executive.
- For maintaining supremacy of the Constitution.
- Securing the independence of the judiciary.
- Protecting the rights of the people.

Constitutional Provisions for Judicial Review

Though the phrase **'Judicial Review'** has **nowhere** been **used** in the **Constitution**, but there are various provisions from the constitution which explicitly confer the power of judicial review on the Supreme Court and the High Courts. These provisions are explained below:

Article 13	❑ All laws are inconsistent with or in derogation of the Fundamental Rights shall be null and void.
Article 32	❑ It guarantees the right to move the Supreme Court for the enforcement of Fundamental Rights. ❑ It empowers the Supreme Court to issue directions or orders or writs for that purpose
Article 131	❑ It provides for the original jurisdiction of the Supreme Court in centre-state and inter-state disputes.
Article 132	❑ It provides for the appellate jurisdiction of the Supreme Court in constitutional cases
Article 133	❑ It provides for the appellate jurisdiction of the Supreme Court in civil cases

Article 134	❑ It provides for the appellate jurisdiction of the Supreme Court in criminal cases.
Article 134-A	❑ It deals with the certificate for appeal to the Supreme Court from the High Courts
Article 135	❑ It empowers the Supreme Court to exercise the jurisdiction and powers of the Federal Court under any pre constitutional law
Article 136	❑ The Supreme Court grants special leave to appeal from any court or tribunal except military tribunal and court martial.
Article 143	❑ The President is authorised to seek the opinion of the Supreme Court on any question of law or fact and on any pre-Constitution legal matters
Article 226	❑ The High Court can issue directions or writs for the enforcement of the Fundamental Rights
Article 227	❑ The High Courts have the power of superintendence over all courts and tribunals within their respective territorial jurisdictions (except military courts or tribunals).
Article 245	❑ The territorial extent of laws made by Parliament and by the Legislatures of States.
Article 246	❑ The subject matter of laws made by Parliament and by the Legislatures of States with reference to Union List, State List and Concurrent List.
Articles 251 and 254	❑ For the conflict cases between the central law and state law, the central law prevails over the state law and the state law shall be void
Article 372	❑ It deals with the continuance in force of the pre-Constitution laws

SCOPE OF JUDICIAL REVIEW

If any law or an executive order is passed then its constitutional validity can be challenged in the Supreme Court or High Court for the following reasons:

- ❑ Infringement of Fundamental Rights (Part III),
- ❑ It is outside the competence of the authority which has framed it, and
- ❑ If it is repugnant to the constitutional provisions.

- ❑ Substantial law focuses on defining rights and obligations, while procedural law focuses on the processes and mechanisms for enforcing and resolving legal disputes.
- ❑ **Substantial law**-It applies to the substantive aspects of legal cases, defining the rights and responsibilities of the parties involved.
- ❑ **Procedural law**-It applies to the procedural aspects, governing the conduct of legal proceedings.

It is evident from the above that the scope of judicial review in India is narrower than the USA, because the American Constitution provides for 'due process of law' against that of 'procedure established by law' which is contained in our Indian Constitution.

Due process of law has a broader scope. It ensures fundamental fairness and justice in any governmental action that affects an individual's life, liberty, or property. This includes not only following established procedures but also protecting against arbitrary or discriminatory actions, even if they follow some established procedure.

After the **Maneka Gandhi case,** the phrase **"due process of law",** though is not mentioned explicitly anywhere in the Indian Constitution, but it has been interpreted by the Supreme Court to be a fundamental right. This means that the government cannot deprive individuals of their life, liberty, or property without due process of law.

In India, due process of law is not only a protection against arbitrary executive action, but also against arbitrary legislative action. This means that the Supreme Court can strike down laws that it finds to be **unfair, unjust, or unreasonable.**

- ❑ ***Maneka Gandhi vs Union of India (1978):*** During this case, the Supreme Court held that the **"Right to travel abroad"** was a part of the **Right to personal liberty under Article 21** of the Constitution.
- ❑ This decision expanded the scope of the right to personal liberty and protected it from arbitrary restrictions by the government.

Judicial Review of the Ninth Schedule

- ❑ **As per Article 31B** the acts and regulations which are placed in the **Ninth Schedule** are protected from being challenged and invalidated on the ground of contravention of any of the Fundamental Rights.
- ❑ **Article 31B** was inserted into the Constitution by the **1st Constitutional Amendment Act of 1951.**
  - The First Amendment was passed in 1951 by the Provisional Parliament by amending Articles such as Article 15, 19, 85, 87, 174, etc. and the members were who had just finished drafting the Constitution as part of the Constitutional Assembly.

- This act provided for the saving of laws for the acquisition of estates, etc.
- Thereafter, **Ninth Schedule was added to protect the land reforms and other laws** included to form the part of the **judicial review.**
  - Later, After Article 31, Articles 31A and 31B were inserted.

- **Golaknath vs State of Punjab (1967):** During this case, the Supreme Court held that the Parliament did not have the power to amend the Fundamental Rights enshrined in the Constitution.
  - However, this decision was later overturned by the **24th Amendment to the Constitution,** which allowed the Parliament to amend any part of the Constitution, including the Fundamental Rights guaranteed under the Articles 14, 15, 19 and 21 or the 'basic structure' of the Constitution.
- **Kesavananda Bharati vs State of Kerala (1973):** During this case, the Supreme Court held that there were limitations on the amending power of the Parliament and that the basic structure of the Constitution could not be altered.
- In **I.R. Coelho case (2007),** the Supreme Court ruled that judicial review is a 'basic feature' of the Constitution and can't be taken away by simply putting it under the Ninth Schedule.
  - It also recommended that the **laws placed under the Ninth Schedule after April 24, 1973** can be **challenged in court** if they violate Fundamental Rights.

While delivering the above judgement, the Supreme Court made the following conclusions:

- The law that abrogates or abridges rights guaranteed by Part III of the Constitution may violate the basic structure doctrine or it may not.
- The majority judgement in the Kesavanand Bharati Case read with Indira Gandhi case requires the validity of each new constitutional Amendment to be judged on its own merits.
- The Supreme Court held that any law placed in the Ninth Schedule after April 24, 1973 (the date of the Kesavananda Bharati case) is subject to judicial scrutiny and can be declared unconstitutional if it violates the basic structure of the Constitution.
- The action taken and transactions finalised as a result of the impugned Acts shall not be open to challenge.

Limitation of Judicial Review:

- It may violate the principle of Separation of Power.
- It limits the functioning of the government and is permissible only to find if the procedure in reaching the decision has been correctly followed but not the decision itself.
- The opinions of the judges once taken for any case become the standard for ruling other cases.
- It violates the limit of power set to be exercised by the Constitution when it overrides any existing law.
- The judgments can be influenced by personal or selfish motives.

JUDICIAL ACTIVISM

The concept originated in the US in 1947. In India it was adopted by the judiciary later on through various judgements and pronouncements, the doctrine of judicial activism was introduced in mid-1970s. Justice V.R. Krishna Iyer, Justice P.N. Bhagwati, Justice O. Chinnappa Reddy and Justice D.A. Desai laid the foundations of judicial activism in the country.

Meaning of Judicial Activism

It denotes the proactive role played by the judiciary for the protection of the rights of citizens and promotion of justice in the society. It implies that the role of the judiciary is to force the other two organs of the government i.e. legislature and executive to do its constitutional duties. It is also known as **"judicial dynamism"**. It works oppositely compared to "judicial restraint", which means that the self-control is exercised by the judiciary.

Significance of Judicial Activism:

- It is a way of exercising judicial power which motivates judges to depart from normally practised strict adherence to judicial precedent in favour of progressive and new social policies
- It is the practice to protect or expand individual rights through decisions that move away from established precedent to have constitutional or legislative intent.
- It denotes an active interpretation of earlier legislation made by a judge to enhance the utility of that law for social betterment.
- It is a philosophy of judicial decision-making where judges are allowed for their personal views about public policy for guidance to others.
- It helps to evolve new principles, concepts, maxims, formulae and relief to do justice.
- Judicial activism is closely related to the concept of Public Interest Litigation (PIL).

Need for Judicial Activism:

- The failure of the executive and legislatures to deliver the desired results.
- Rampant corruption and violation of basic human rights through the government agencies.
- It occurs because the entire system has been plagued by ineffectiveness and inactiveness.

- Due to the misuse and abuse of some of the provisions of the Constitution.
- The principles of democracy were continuously degrading.

In such a scenario, the judiciary was forced to play an active role. It was possible only through an institution like judiciary which is vested with powers to correct the various wrongs in society. In order to prevent the compromise of democracy, the Supreme Court and High Courts took the responsibility of solving these problems.

Manifestation of Judicial Activism:

- Through Judicial Review
- Through Public Interest Litigation
- Through Constitutional Interpretation
- Through Access to international statutes for ensuring constitutional rights

Cases Associated with Judicial Activism:

- A.K. Gopalan v. State of Madras (1950)
- I. C. Golaknath & Ors vs State Of Punjab & Anrs. (1967)
- Kesavananda Bharati case (1973)
- Hussainara Khatoon (I) vs State of Bihar (1979)
- Sheela Barse vs State of Maharashtra (1983)

Differences between Judicial Review and Judicial Activism

The concept of judicial review and judicial activism seems closely related to each other, but there are certain differences between them which we can see from the following table.

Basis	Judicial Review	Judicial Activism
Definition	❑ It is the process where the judiciary reviews the validity of laws passed by the legislature, so it is called a Judicial Review.	❑ It interprets the Constitution to deal with contemporary issues. The Judiciary uses its authority so it is called Judicial Activism.
Goals	❑ It reviews the laws which are against the law of the land.	❑ It has the power to overrule any acts or decisions.
Intent	❑ It reviews the validity of the laws under Article 13.	❑ It is the use of Judicial authority to enforce what is essential for society.
Power	❑ Judge uses the power to protect and enforce Fundamental Rights.	❑ Judges use their power especially when constitutional bodies are not acting properly.
Example	❑ Striking down the Section 66A of the IT Act as it was against the Fundamental Rights guaranteed by the Constitution	❑ Mechanisms which have no constitutional backing i.e. suo-motto (on its own cases) PIL, new doctrines

Justification of Judicial Activism

As per **Dr. B.L. Wadehra**, judicial activism happens due to the following reasons:

- Due to the collapse of the responsible government
- The citizens expect protection of their rights and freedoms from the judiciary
- The judges encourages the **Public Interest Litigation** and relaxing the principles of **'Locus Standi'** to participate in the social reforms

Similarly, **Subhash Kashyap** finds out certain events which happens when the judiciary overstep from its normal jurisdiction and intervene in areas which falls under the domain of the legislature and the executive

- Legislature fails to discharge its responsibilities.
- In the event of a 'hung' legislature when the government is unable to take decisions on certain crucial matters due to political considerations.
- Political unwillingness to take honest and hard decisions.
- When legislature and executive fails to protect the basic rights of citizens, like the right to live a decent life
- When the court of law is misused by a strong authoritarian parliamentary party government
- Also when the courts becomes victims of weaknesses of craze for populism, publicity, playing to the media and hogging the headlines.

According to **Dr. Vandana,** judicial activism can be seen from the following aspects,

- Enhancement of the right to be heard in the administrative procedure.

- No limitation for Excessive delegation
- Judicial control over discretionary powers.
- Judicial review over the administration.
- Encouragement of Open government
- Excessive use of power of Contempt.
- Exercise of jurisdiction when non-exist.
- Excessive interpretation of rules in its search to achieve economic, social and educational objectives.

APPREHENSION OF JUDICIAL ACTIVISM

Ideological Fears- Are they upsuring powers of the legislature, the executive or other autonomous institutions in a civil society
Epistematic Fears- Do they have enough knowledge in economic matters
Apprehension of judicial activism
Management Fears- Are they doing justice by this kind of litigation work load to situation of staggering growth of arrears
Democratic Fears- Is a profusion of PIL nurturing democracy or its potential of the future.

Fig. 26.1: Apprehension of Judicial Activism

Judicial Activism vs Judicial Restraint

Judicial Activism	Judicial Restraint
❑ It relates to those activities of Judges where they carry out their duties, and go beyond the strict judicial function and enter into the political policymaking areas.	❑ It relates to those activities of Judges where Judges hesitate to strike down the laws unless they seem to be unconstitutional.
❑ This concept loosely interprets and applies to the Constitution based on ongoing changes and the values.	❑ This concept follows a strict interpretation of the Constitution and believes judges should also follow the Precedence.
❑ It is decided when the case it believes to be the spirit of the Constitution and willing to overturn legislation.	❑ It is decided when the case is on the "letter" of the Constitution, it usually gives legislation the benefit of doubt.

JUDICIAL OVERREACH

Judicial overreach refers to instances where the judiciary, beyond its constitutional mandate, becomes excessively active in policymaking or infringes upon the domain of the executive and legislative branches. There is a thin line dividing judicial activism and judicial overreach. When Judicial Activism goes overboard, and becomes Judicial Adventurism, it is referred to as Judicial Overreach. The direct effect of legislative and executive negligence or inability is "judicial overreach".

Impact of Judicial Overreach:

- ❑ It threatens the doctrine of separation of powers which undermines the spirit of the constitution.
- ❑ There is a lack of harmony between legislature and judiciary and an impression on the public of inaction by the legislature.
- ❑ In certain cases like that of environmental, ethical, political, expert knowledge is required which the judiciary might not possess.
- ❑ If it renders judgement while having no experience in these domains, then it not only undermines expert knowledge but also can prove harmful to the country.

Examples of Judicial overreach:

- ❑ **Censorship of the Film Jolly LLB II:** The film portrayed the legal profession as a joke, making it an act of contempt and provocation
- ❑ **The Supreme Court banned the Sale of Liquor:** On a PIL about road safety, the Supreme Court banned the Sale of Liquor, at retail shops, restaurants, bars within 500 m of any national or state highway.

The Supreme Court has itself reminded other courts, in 2007, to practise Judicial restraint. It stated "Judges must know their limits and must try not to run the government. They must have modesty and humility, and not behave like emperors." Further, it said, "In the name of judicial activism, judges cannot cross their limits and try to take over states which belong to another organ of the state".

CONTEMPT OF COURT

Definition

It is referred as the crime of being disobedient to or disrespectful toward a court of law and its officers in the form of behaviour that opposes or defies the authority, justice, and dignity of the court.

Contempt of Courts Act, 1971: It defines Contempt of Court as Civil contempt or Criminal contempt:

Civil Contempt means wilful disobedience to any judgement, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court;

Criminal Contempt means the publication (whether by words, spoken or written, or by signs,or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which— scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court; or prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner;

Criminal contempt: Publication of any matter or doing any act which-

Constitutional Provision

Article 129 and Article 215	The Powers of Supreme Court and High Court as a court of record which includes the power to punish for contempt of itself.
Article 142(2)	Subject to the provisions of any law made in this behalf by Parliament, the Supreme Court shall, as respects the whole of the territory of India, have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself.

Need for Contempt of Court

Upheld court honour	❑ It helps the Judiciary which rests on the trust of people. In Pritam Lal v. The High Court of M.P. the Supreme Court held that it is the duty of the Court to punish the contempt act to preserve its dignity.
Rule of Law	❑ Disobedience of court's order violates the principle of Rule of Law. Hence contempt power holds together the basic structure of the Constitution.
Equality before law	❑ It is a tool against the rich and the powerful by forcing compliance to the court orders
Independence of the judiciary	❑ Protection from the opinion of public and media trials
Credibility and efficiency of judiciary	❑ E.g. contempt proceedings against Justice Karnan for his demeaning behaviour.
Reasonable restriction	❑ Article 19(1) of the Constitution-It provides contempt of court as a reasonable restriction for curbing the freedom of speech and expression
274th Report of Law Commission	❑ Several inbuilt safeguards to protect against its misuse. E.g. Section 13 of the Contempt of Courts Act, 1971: If the degree of harm is slight and beneath notice, the court won't punish for contempt
Interference in justice Administration	❑ Brahma Prakash Sharma v State of Uttar Pradesh-It is not necessary to specifically prove that an actual interference with the administration of justice has been committed in contempt of court case.

Argument Against

- ❑ Contempt of court provision stifle free speech and expression
- ❑ Judicial accountability: In free democratic society, criticism of the Judiciary is inevitable to hold it accountable. It should not be a matter of concern as long as it doesn't obstruct Justice delivery.
- ❑ Vague grounds: Grounds such as scandalising the court are open-ended and prone to misuse.
- ❑ Against the Principle of Natural justice: No man should be the judge in his own case. But in contempt cases, Judges are a judge in their own cause.
- ❑ International practices:
  - UK: 'scandalising the court' as a ground for criminal contempt was abolished in 2013.

- Canada: The Courts are free to be criticised unless there is an imminent danger to justice delivery.
- USA: Dignity of the Court will not be established and respected if free discussions about the Court were restricted on the pretext of preserving its duty.

- Period of Limitation: Despite the maximum duration for initiating contempt proceedings is one year, many of the contempt cases are pending for more than ten years.
- National Commission to review the working of the Constitution (NCRWC) Contempt power and judicial review are restricted to SC and HC only.
- The contempt jurisdiction is not intended to uphold the personal dignity of the Judges.

Reasons to Support it

Law Commission: It says that there is no any requirement to amend the Act, due to the reasons stated below :

- **A high number of contempt cases**: Justify the continuing relevance of the Act.
- **Source of contempt power**: It flows from the Constitution. The Act only outlines the procedure for investigation and punishment for contempt. Therefore, deletion will not have any impact.
- **Impact on subordinate courts**: High Court to punish for contempt of subordinate courts. If contempt definition is narrowed, subordinate courts will suffer as there will be no remedy.
- **Restrict court power**: The 1971 Act lays down procedure which restricts the vast authority of the courts in wielding contempt powers. Amending the definition of contempt will lead to ambiguity.
- **International comparison**:
  - The last offence of Scandalising the Court in the UK was in 1931 whereas India continues to have a high number of criminal contempt cases.
  - The offence of Scandalising the Court is punishable in the UK under other laws.

Suggestions

- **Reduce discretion:** Contempt power shall be made more determinate and principled.
- **Identify the differences:** The difference between contempt of court and contempt of a judge.
- **Proportional Punishment:** Punishment for contempt is inadequate and is not a sufficient deterrent. It should be sufficiently enhanced to deal with interference in justice delivery.
- Baradakanta Mishra v the Registrar of Orissa High Court : By this judgement, the court needs to check vilification of a judge in an individual category or in official capacity. If earlier then the Court has no power to commit contempt and the Judge shall consider private remedies.
- **Elements of 'mens rea'** (legal concept denoting criminal intent or evil mind): It may be incorporated in the act.
  - Establishing the **'mens rea**' of an offender is usually necessary to prove guilt in a criminal trial.
- **Punishment shall be the last resort.**

Public institutions in a free society must stand upon their own merits. They cannot withstand if their conduct does not command the community's confidence. If their conduct justifies the respect of a community then they do not need the protection under contempt rules.

PUBLIC INTEREST LITIGATION (PIL)

Definition

The concept originated in the USA during the 1960s, it implies litigation for the protection of public interests. It was done by recognizing the fact that the ordinary marketplace has failed to provide services to some of the significant segments of the population and also to significant interests, which include the poor, environmentalists, consumers, racial and ethnic minorities, and others.

Meaning of PIL

Public Interest Litigation (PIL) means litigation filed in a court of law for the protection of "Public Interest", such as Pollution, Terrorism, Road safety, Constructional hazards, etc. It is the power given by courts to the public through judicial activism. It is not defined in any statute or in any act. However, the person must prove the satisfaction to the court for the public interest. The court can itself take cognizance of the matter and proceed suo-motu in the petition of any public-spirited individual.

Purpose of PIL:

- Vindication of the rule of law,
- Facilitating effective access to justice to the socially and economically weaker sections
- Meaningful realisation of the fundamental rights

Public Interest Litigation in India:

- The concept originated in India during the 1980s by Justice V.R. Krishna Iyer, and Justice P.N. Bhagwati. It was the product of judicial activism as the role played by the Supreme Court. It is also known by several other names, such as Social Action Litigation (SAL), Social Interest Litigation (SIL) and Class Action Litigation (CAL).

Features of PIL

- It is brought not for the purpose of enforcing the right of one individual against another but to promote and vindicate public interest.
- It notices the demands of poor or socially or economically disadvantaged people whose constitutional and legal rights are not noticed.

- It is undertaken for the purpose of redressing public injury, enforcing public duty.
- It is creative rather than passive and it assumes a more positive attitude in determining acts.
- It allows one to enjoy a degree of flexibility unknown to the trial of traditional private law litigations.
- For PIL, there is no determination on adjudication of individual rights.

Principles of PIL

The Supreme Court evolved the following principles in regard to PIL:

- As per Article 32 and 226 of the Constitution, it should protect the Fundamental Rights of disadvantaged people.
- For the publicly important cases the Court relaxes the procedural laws and also the law relating to pleadings.
- For injustice to a large number of people, the court should not hesitate to invoke articles 14 and 21 of the Constitution of India as well as the International Conventions on Human Rights
- The rule of **"locus standi"** is relaxed to handle grievances complained on behalf of the deprived people.
- The Court may not allow the State to use PIL for raising the question for Constitutional Rights
- It would depend on the nature of the petition and also facts and circumstances of the case.
- The dispute between two warring groups would not be allowed as a PIL.
- The Court may appoint a Commission for investigating the allegations and finding out facts.
- It should take care to transgress its jurisdiction while purporting to protect the rights of the people.
- It should not entertain a writ petition which questions the constitutionality, statute or a statutory rule.

Who Can File a PIL and Against Whom?

- Any citizen can file a PIL by filing a petition:
  - Under Article 32 of the Indian Constitution, in the Supreme Court.
  - Under Article 226 of the Indian Constitution, in the High Court.
  - Under sec. 133 of the Criminal Procedure Code, in the Court of Magistrate.
- But the court must be satisfied with the writ petition and it should fulfil some basic needs.
- It can be filed only against a State/Central Government, Municipal Authorities, and not against any private party.

Genesis and Evolution of PIL

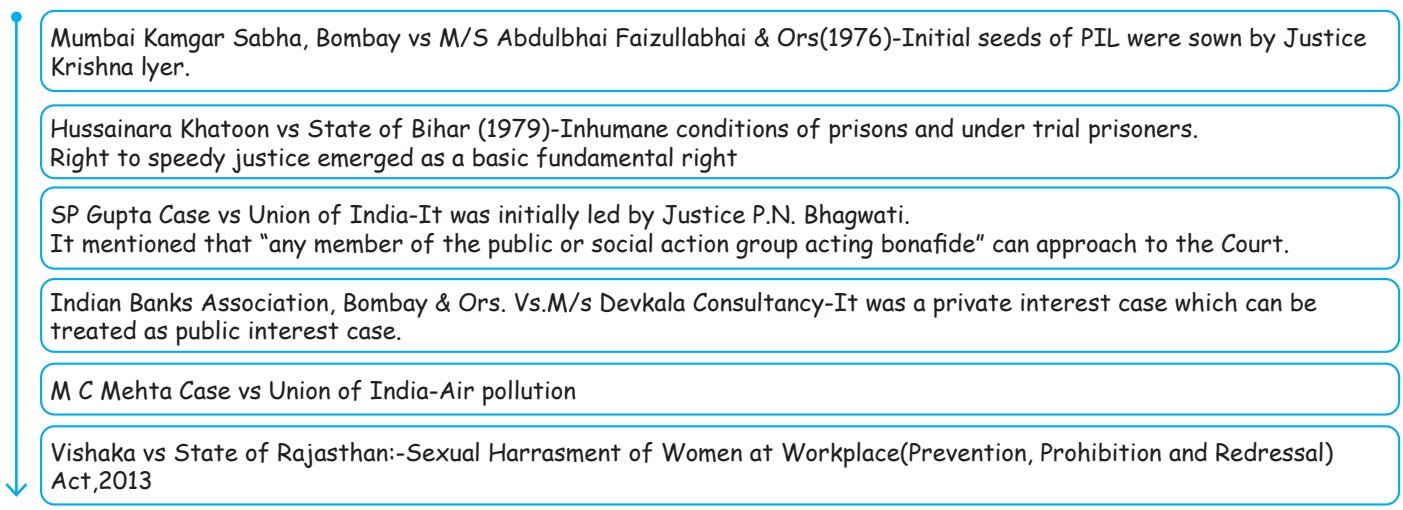

Mumbai Kamgar Sabha, Bombay vs M/S Abdulbhai Faizullabhai & Ors(1976)-Initial seeds of PIL were sown by Justice Krishna Iyer.
Hussainara Khatoon vs State of Bihar (1979)-Inhumane conditions of prisons and under trial prisoners. Right to speedy justice emerged as a basic fundamental right
SP Gupta Case vs Union of India-It was initially led by Justice P.N. Bhagwati. It mentioned that "any member of the public or social action group acting bonafide" can approach to the Court.
Indian Banks Association, Bombay & Ors. Vs.M/s Devkala Consultancy-It was a private interest case which can be treated as public interest case.
M C Mehta Case vs Union of India-Air pollution
Vishaka vs State of Rajasthan:-Sexual Harrasment of Women at Workplace(Prevention, Prohibition and Redressal) Act,2013

Fig. 26.6: Genesis and Evolution of PIL

Important Judgments related to PIL

There have been various significant judgments related to Public Interest Litigation (PIL) in India over the years and some of them are:

Bandhua Mukti Morcha vs. Union of India (1984):	❑ This was the first PIL filed by an NGO to deal with the exploitation of bonded labourers. ❑ In this case, the Supreme Court ordered the release of all bonded labourers and provided them with compensation.
Rural Litigation and Entitlement Kendra (RLEK) vs. State of Uttar Pradesh (1985):	❑ In this case mining activities had led to environmental degradation, deforestation, and displacement of local communities. ❑ During this case, the Supreme Court recognized that the right to a healthy environment was an integral part of the right to life under Article 21 of the Constitution

MC Mehta vs. Union of India (1986):	❑ This was the first PIL to be filed on an environmental issue and that was of pollution in Delhi. ❑ In this case, the Supreme Court replaced the strict liability principle with the absolute liability principle to protect citizens' rights.
People's Union for Civil Liberties vs. Union of India (1996):	❑ This case was dealt with the issue of custodial deaths and the right to legal aid to these victims. ❑ The Supreme Court held that the right to life under Article 21 of the Constitution included the right to live with human dignity, free from torture and other forms of cruel, inhuman or degrading treatment
Vishaka & Others v. State of Rajasthan & Others (1997):	❑ The Court laid down guidelines and norms to be observed to prevent sexual harassment of working women. ❑ The judgment led to the enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013

Factors behind the growth of PIL

Liberal interpretation of locus standi: Any person can file as well as suo- motto by the Judges.

Right to life Provisions: This Article has been broadened to various provisions as free legal help, the right to live with dignity, the right to education, and the right to work.

Judicial innovations: The judgement of Bandhua Mukti Morcha, and Asiad Workers cases.

Creation of Commission by the Courts to collect information: when the petitioner is unable to furnish all relevant evidence, either because it is bulky or because the parties are socially or economically poor.

Issues and Challenges

- ❑ Problem of competing rights i.e., when a court issues orders for the closure of a polluting industry, the interests of the concerned families are not taken into consideration.
- ❑ Judicial Overreach happens as the judiciary takes cases of socio-economic or environmental issues.
- ❑ Frivolous PILs lead to overburden for the courts.
- ❑ Inordinate delays in the disposal of PIL.

Significance of PIL

Scope of PIL

The Supreme Court formulated a set of guidelines to be followed for entertaining petitions received as PIL in 1988. These guidelines were modified further in 1993 and also in 2003. Hence, according to them the letters or petitions falling under the following categories will be entertained as PIL: Bonded labour matters, Neglected children, Non-payment of minimum wages to workers, Exploitation of casual workers, Petitions related to environmental pollution, food adulteration, Petitions complaining of harassment or torture of villagers by co-villagers or by police from persons belonging to Scheduled Caste and Scheduled Tribes and economically backward classes and Maintenance of heritage and culture Family pension.

The following category cases will not be entertained as PIL: Landlord-tenant matters Pension, gratuity and service matters, Admission to medical and other educational institutions, Petitions for early hearing of cases pending in High Courts and Subordinate Courts.

Guidelines for Admitting PIL

Currently, the PIL has become an important field in the administration of law. Therefore, it should not be allowed to become 'Publicity Interest Litigation' or 'Politics Interest Litigation' or 'Private Interest Litigation' or 'Paisa Interest Litigation' or 'Middle-class Interest Litigation' (MIL).

The Supreme Court observed that "*PIL is not a pill or a panacea for all wrongs. It was essentially meant to protect basic human rights of the weak and the disadvantaged and was a procedure which was innovated where a public-spirited person files a petition in effect on behalf of such persons who on account of poverty, helplessness or economic and social disabilities could not approach the court for relief.*

There have been, in recent times, increasingly instances of abuse of PIL. Therefore, there is a need to re-emphasise the parameters within which PIL can be resorted to by a petitioner and entertained by the court."

The following guidelines are laid down for the Supreme Court to check the misuse of the PIL:

- Only genuine and bonafide PIL and discourage extraneous considerations.
- Each High Court should properly formulate rules as per them which cases to be encouraged under PIL.
- Substantial public interest is involved before entertaining the petition.
- It involves larger public interest, gravity and urgency must be given priority over other petitions.
- Must ensure that the PIL is aimed at redressal of genuine public harm and public injury.
- No personal gain, private motive or oblique motive behind filing PIL.

CONCLUSION

In India, Public Interest Litigation has produced significant results which were unthinkable three decades ago. The cases such as degraded bonded labourers, tortured under trials and women prisoners, humiliated inmates of protective women's homes, blinded prisoners, exploited children, beggars, and many others have been given relief through judicial intervention. It has enhanced the accountability of the governments towards the human rights of the poor.

At the same time, the judiciary should be cautious enough in the application of PILs to avoid Judicial Overreach that are violative of the principle of Separation of Power. Besides, the frivolous PILs with vested interests must be discouraged to keep its workload manageable.

Judiciary: Reforms and Recent Trends

27

PHASES OF INDIAN JUDICIARY

Nearly 70 years ago, on January 26, 1950, the Indian Constitution came into effect. It was enacted in order to bring about Universal Adult Suffrage and federalism in a territory made up of over 550 princely states, and a social revolution in a society split along caste, religious, and other lines, it was an extremely ambitious political experiment.

Nonetheless, it has been observed that the Indian judiciary has been able to oversee a singular accomplishment in terms of constitutional construction. The following stages describe the evolution of the judiciary and how it has interpreted the Constitution:

Phase One: Textualist Approach

During its early years of interpretation, the Supreme Court took a textualist stance, focusing on the words' exact meanings as they were stated in the Constitution.

- It can be deduced from the **A.K. Gopalan vs. State of Madras (1950),** in which the Supreme Court interpreted Part III of the Constitution, which contained the Fundamental Rights.
  - The Communist Party of India (CPI) leaders argued in this case that the laws pertaining to preventative detention violated **Articles 19** (the right to freedom), **Article 21** (the right to life), and **Article 22** (the prohibition against arbitrary arrest and imprisonment).
- In addition to affirming the legality of preventive detention, the Supreme Court ruled that the several sections dealt with rather distinct topics and should be interpreted as distinct laws instead of being interpreted collectively.
- Whether Parliament had the authority to alter the Indian Constitution and, in particular, whether it could be amended with reference to Fundamental Rights were the most contentious issues at the time.

During this phase, it can be said that the Court initially interpreted the Constitution literally because there were no restrictions.

Phase Two: The Structuralist Approach

During this phase, it was evident that the Supreme Court started looking into alternative interpretation techniques. The appeals to the general structure and coherence of the Constitution eventually surpassed the appeals to its content.

- The Supreme Court held in the well-known case of **Kesavananda Bharati v. State of Kerala (1973)** that Parliament's ability to change the Constitution did not include changing its fundamental structure.
- Subsequently, the Supreme Court overturned its previous position in the A K Gopalan case in the Maneka Gandhi v. Union of India (1978) decision.
- In this case, the Court viewed the Fundamental Rights as a comprehensive bill of rights as opposed to a collection of unrelated constitutional provisions.
- Due to the Supreme Court's progressive interpretation of the **Right to Life (Article 21)**, which now encompasses a wide range of rights like free legal representation, a swift trial, and clean air, the right to life has played an unparalleled role in the nation's government.
- In order to put this into practice, the Indian Supreme Court invented the **Public Interest Litigation (PIL)**, opening the doors of the legal system to the general public.

At present, the PIL has currently gained unparalleled legitimacy and binding authority, and it is recognized as a potent tool to resist social injustice and state illegality.

Phase Three: Challenge of Heterogeneity

During this phase, it was determined that although the Supreme Court's interpretive philosophy had become more result-oriented, it had not provided a comprehensive analysis of the concerns.

The main causes for this rising trend are as follows:

- The Supreme Court **initially** started off with **eight justices** and **eventually expanded** to a a larger base of judges with diversified view points.
- It then started to sit in panels of two or three judges due to the increasing number of cases and pending cases, thereby turning it into a **"polyvocal" group**.
- Furthermore, the Indian judiciary has grown to be one of the strongest in the world thanks to judicial activism.
- Under the pretext of the judiciary's independence, the Indian judiciary has been accused of judicial overreach, nepotism, and shielding itself from any reform.

- Cases such as the **Master of the Roster issue** or the **99th Constitutional Amendment (National Judicial Appointment Commission)** being deemed ultra vires are examples of this.

Phase Four: Social Revolution and Transformation

During this phase, the Supreme Court has passed several judgments which recognises the **individual's rights** and thereby ushering in an era of social transformation.

Cases seen during this phase includes,

- **Decriminalisation of Homosexuality:** The Supreme Court in 2018 ruled to decriminalise homosexuality which was mentioned under **Section 377 of the Indian Penal Code.**
- **Lifting ban on entry of women inside Sabarimala Temple:** The Supreme Court overturned a prohibition that barred women between the ages of 10 and 50 from accessing **Kerala's Sabarimala temple,** ruling that "Devotion cannot be subjected to gender discrimination".
- **Adultery not a Crime:** The unconstitutionality of **Section 497 of IPC** was ruled by the Supreme Court. Although adultery itself is no longer illegal, it will still be considered aiding and abetting suicide if the conduct results in a suicide.

In addition to the aforementioned changes, the Indian judiciary has undergone reforms to increase transparency, such as the Supreme Court's live streaming and the CJI's inclusion in the RTI. To preserve the judiciary's independence, the Indian judiciary should work to achieve a balance between accountability and transparency.

ISSUES WITH THE JUDICIAL SYSTEM

The judiciary must continuously modify and adjust to changing demands as a result of society's constant evolution; this is a very dynamic and ongoing process. However, problems occur if it is ill-prepared to meet fresh difficulties and keep up its efficacy in advancing justice and equality for all.

Some important issues plaguing the Indian Judicial System are:

Appointment of Judges	❑ In India, the collegium system is used for the appointment and removal of judges, and it has been criticised for operating opaquely.
Pendency of Cases	❑ Since most cases are filed at the lower judicial levels, where there is a significant scarcity of judges, the backlog of cases is especially bad there. ❑ By the end of 2022, the approximate number of pending cases are as follows: • **Supreme Court cases** - 71,411 • **High Court cases** - Six million • **Lower courts cases** - 41 million
Shortage of Judges	❑ In India's subordinate courts, almost 35 percent of open positions have not been filled. India has just **about 21 judges per million people**, which leads to a low judge-to-population ratio.
Lack of gender diversity	❑ Since the Supreme Court's establishment, there have only been **11 female judges** and **no female Chief Justice till date.**.
Undertrials	❑ In 2020, the **National Crime Records Bureau (NCRB)** released a study titled "Prison Statistics India." It said that there were **4,88,511 prisoners**, with **76% of them awaiting trial.**
Poor Condition of Infrastructure	❑ The maintenance of India's judicial system is funded by just **0.09% of the nation's GDP,** which leaves the judiciary in bad shape.
Burden of extra-judicial work	❑ Judges' workloads have increased because of extrajudicial activities like Legal Services, which takes time and attention away from their primary duties.
Procedural issues	❑ It involves the police and process servers delaying the serving of summonses and notices to the accused and respondents.

Outdated Procedural laws	❑ In comparison to the demands of modern society, the previous procedural laws such as **The Evidence Act of 1872**, **Code of Criminal Procedure 1973,** and **Code of Civil Procedure 1908** are all out of date. ❑ They make it possible for the frequently requested and granted adjournment requests. Litigation has thus evolved into a drawn-out, expensive, unpredictable, and inflexible procedure.

Implications on the Overall Justice Delivery System

Some of these issues in the Judiciary system which negatively impacts Justice delivery are:

- **Deteriorating quality of Justice:** Due to time constraints, judges might not have enough resources or time to thoroughly evaluate each case's merits. This may result in choices that are ill-informed or insufficiently focused on the problems at hand.
- **Delays in the administration of justice:** Case resolution might be delayed for years or even decades due to a significant backlog of cases awaiting hearings.
- **Financial burden on litigants:** Litigants may incur significant costs during protracted litigation due to the costs associated with extended judicial proceedings.
- **Slowdown in economy:** The economy may be negatively impacted by these justice system problems as well because unresolved legal disputes can hinder or delay corporate growth.
- **Loss of faith in the legal system:** The public may lose faith in the legal system as a result of protracted delays, a lack of legal help, etc.

Factors Affecting Judicial Reforms

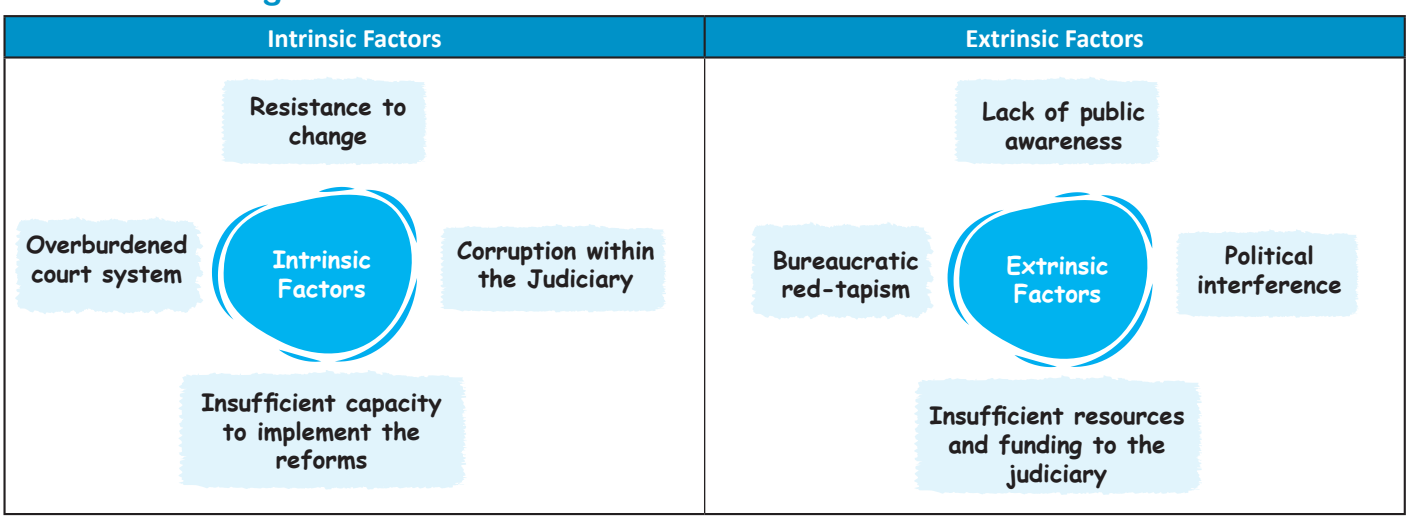


Fig. 27.1: Factors Affecting Judicial Reforms

Significant Reforms Done in the Indian Judicial System

- **National Judicial Appointments Commission (NJAC):** The NJAC aimed to replace the collegium system for the appointment of judges. However, it faced constitutional challenges and was struck down by the Supreme Court in 2015. The collegium system, where judges appoint judges, continues to be the prevailing method.
- **Mediation and Alternate Dispute Resolution (ADR):** There has been an increased emphasis on promoting mediation and other ADR mechanisms to reduce the burden on the courts and facilitate faster dispute resolution.
- **National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT):** The NCLT and NCLAT were established to deal with matters related to company law. They have jurisdiction over cases such as corporate disputes, insolvency, and bankruptcy.
- **Fast-Track Courts:** Specialised fast-track courts have been established to expedite the disposal of certain categories of cases, such as those related to sexual offences and crimes against women.
- **Commercial Courts and Commercial Division:** To expedite resolution of commercial disputes, the Commercial Courts Act was enacted in 2015. It established commercial courts at the district level and

commercial divisions in high courts to handle cases with a specified value.

- **Legal Aid and Access to Justice:** Efforts have been made to enhance legal aid services, making justice more accessible to marginalised and economically weaker sections of society.

Suggestive Measures to Reform the Judicial System

Recommendation of Law Commission of India (LCI), 2009:

Reducing pendency	**For reducing the number of pendency cases it suggested:** ❑ The Supreme Court's maximum strength of Judges will be increased in order to decrease the backlog of cases. ❑ To guarantee prompt justice delivery, the Supreme Court must be divided into four regions: Delhi, Chennai/Hyderabad, Kolkata, and Mumbai; a Constitution Bench will be located in Delhi; and Cassation Benches will be located in Delhi, Chennai/Hyderabad, Kolkata, and Mumbai. ❑ The retirement age for judges of the Supreme Court and High Court must be raised by at least three years by constitutional provisions. ❑ Appointing more judges in order to keep the ratio of judges to population at 50 per million.
Transparency in Appointment	❑ It was suggested that in order to select the most qualified applicants for appointments, the executive and judicial branches collaborate. ❑ It might be accomplished by fusing the judiciary's legal expertise with the executive branch's strong antecedent-related viewpoint.
Optimum time utilisation	❑ It was determined that the Staggering arrears, the higher judiciary's mandatory 10- to 15-day vacation, and the minimum extension of the court's operating hours were all necessary.

- **All India Judicial Services (AIJS):** The goal of this proposed national-level judicial service in India is to establish a centralised, unified system for hiring and advancing the careers of judicial officers throughout the nation.
- **Judicial Management cadre:** A Judicial Management Cadre to manage judiciary administration at all levels can be established.
- **National Judicial Infrastructure Authority:** A National Judicial Infrastructure Authority should be established, in the opinion of former Indian Chief Justice N V Ramana, in order to standardise and enhance judicial infrastructure.
- **Increase representation of women in the Judicial System:** "The presence of women as judges and lawyers, will substantially improve the justice delivery system," said former Chief Justice N V Ramana. He has shown support for women to hold a 50% position in the judiciary.
- **Judicial Impact Assessment:** A Judicial Impact Assessment (JIA) evaluates both the potential financial consequences of changes to substantive or procedural law as well as the effects those changes may have.
- **JIAs are beneficial to legislators, members of the judiciary and the society:**
  - In understanding the likely effect that a law would have on the legal system.
  - Required amendments to the law to keep pace with changes in society.
  - Impact of changes to law on the functioning of the justice delivery system.
- **Simplifying procedural laws:** Repealing or revising obsolete or unworkable laws to improve and bring clarity to substantive laws, and simplifying procedural laws to speed the hearing and resolution of cases.
- **Increase the use of the ADR mechanism:** Bringing awareness to litigants about Alternative Dispute Resolution (ADR) methods and promoting settlements outside of court.
- **Efficient functioning of Fast Track Courts:** It is necessary to take a two-pronged approach that restructures procedures while enhancing these courts' human capacity with committed judges and capable employees.
- **Timely justice to Undertrials:** Enough possibilities for bond can be granted in order to give undertrials with speedy justice. **"Bail is the norm, whereas jail is an exception,"** the Supreme Court ruled.
- **Research and Training Centre:** It is possible to construct a Research and Training Center to undertake Judicial Impact Assessments, train government law officers, and improve the formulation of legislation.
- **Prompt Investigation and Prosecution:** To guarantee appropriate and prompt investigation and prosecution, the way in which police and prosecuting authorities,

such as the Directorate of Prosecution, operate should be enhanced.

As a result, the need for judicial reforms is a dynamic and continuous process. By implementing these changes, the Judiciary will be better prepared to meet new challenges and continue to effectively advance justice and equity for all.

JUDICIAL ACCOUNTABILITY

It is defined as the set of mechanisms that aims at making judges and courts personally or institutionally responsible for their behaviours and decisions contrary to constitutional or legal standards.

As the Judiciary is the protector of Fundamental Rights and interpreter of the Constitution, it is required to be independent and outside influence of political and economic entities. Within the Constitution, as per Article 235 it provides for 'control' of the High Court over the subordinate judiciary, which clearly indicates the provision of an effective mechanism to enforce accountability.

Need of Judicial Accountability

- To reduce the pendency of cases.
- To ensure faith and trust of citizens in democratic institutions.
- Improve efficiency and transparency in delivering quality judgements.
- Lack of effective mechanism to enforce accountability among judges of Supreme Court.

Implications of Lack of Judicial Accountability

- Judges have been alleged to have indulged in corruption, sexual harassment, post retirement jobs.
- Judges have virtually kept themselves out of the ambit of the RTI Act.
- Due to lack of accountability measures, pendency across all courts grew by 2.8% annually between 2010 and 2020.
- Judicial Overreach violating the principle of separation of power.
- Opacity in the functioning of the judiciary such as allocation of judges, judicial appointments, disciplinary actions.
- Collegium system has led to concentration of immense power in the hands of judges, promoting nepotism.

Steps taken to Promote Judicial Accountability

- **Contempt of Courts (Amendment) Bill, 2003:** Initially, it was introduced in the Lok Sabha and referred to Parliament Standing Committee on Home Affairs.
  - At present, this Act should be amended to remove the words, 'scandalising the court or lowering the authority of the court' from the definition of criminal contempt.
- **In-house procedure:** Formulation of this procedure helps to inquire into any allegation of misbehaviour or misconduct against them, which is considered fit for inquiry by the Chief Justice of India and also some of his senior colleagues.
- The Supreme Court and the high courts resolved to publish voluntary declarations of assets by their judges in 2009.
  - Also, Bangalore Principles of Judicial Conduct were adopted in 2002 which recognises **six core values** that are Independence, impartiality, integrity, propriety, equality and finally competence and diligence.
- **Memorandum of procedure, 2016:** This procedure helps to bring transparency in judicial appointments and also sets up a permanent secretariat in the Supreme Court for maintaining records of High Court judges.
- **Judicial standard and accountability Bill, 2010:** This bill requires judges to declare their assets, lays down judicial standards, and establishes processes for removal of judges of the Supreme Court and High Courts.
- **Use of technology:** To digitise the legal process and monitor the entire life cycle of a case.
  - **LIMBS (Legal Information Management & Briefing System):** It is a web-based application to monitor cases in a more effective and transparent manner where the central government of India is involved.

It should be a more formal and comprehensive Code of Conduct for Judges that will be enforceable by law. The annual reports on functioning and efficiency should be published to foster accountability, as it has been done by the Orissa High Court.

COLLEGIUM SYSTEM

It is a system for the appointment and transfer of judges in the Supreme Court as well as the High Court. It is not mentioned in the Constitution but has evolved through various judgments of the Supreme Court. In this system, the Chief Justice of India (CJI), along with four senior-most Supreme Court judges, recommends the appointment and transfer of judges. The government may raise objections and seek clarifications regarding the Collegium's choices, but if the Collegium reiterates the same names, the government is bound to appoint them to the post.

Debates over collegium system in India

First Judges Case (1981): **S P Gupta Vs Union of India**	❑ The Supreme Court held that consultation mentioned in Article 124 of the Constitution means **'effective consultation'** and not concurrence of the CJI. ❑ It gave **primacy** to the executive over judiciary in judicial appointments.
Second Judges Case (1993): **Supreme Court Advocates-on-Record Association Vs Union of India**	❑ **"Consultation"** really meant **"concurrence"** of the CJI (Judicial primacy). ❑ Introduction of collegium system, the CJI is required to consult with **two of his most senior colleagues** before tendering such advice and the advice is binding on the President.
Third Judges Case (1998): **President's reference (Article 143)**	❑ Court's opinion on the appointment and transfer of judges through **'consultation of plurality judges'.** ❑ The Supreme Court expanded the Collegium to a **five-member body**, comprising the CJI and four of his senior-most colleagues.
Fourth Judge Case (2015): **National Judicial Appointments Commission (NJAC) Act**	❑ A five-judge Constitution Bench declared it as unconstitutional and nullified it on the grounds that it posed threat to judicial appointments.

Issues with the Collegium System

Lack of transparency	❑ It is often criticised for its lack of transparency as the reasons for the collegium system decisions are not disclosed to the public.
Charges of nepotism	❑ The Law Commission in 2009 addressed that nepotism and political privilege was rife in the workings of the collegium system.
Against the system of checks and balances	❑ It violates the principle of checks and balances as it ensures the complete exclusion of the executive from the judicial appointment process, which leads to a lack of accountability.
Lack of representation of women	❑ This system does not ensure adequate representation of women in the judiciary. ❑ In the Supreme Court, there are currently three women justices out of the sitting 34, whereas in High Courts, women judges constitute 11.5%.
Transfer of judges	❑ Currently, the Supreme Court and the government do not disclose the reason for a transfer of judges. So, there might be possible threat to judicial independence
Judicial vacancies	❑ There has been a struggle to keep up with the stagnant vacancies in the judiciary leading to the pendency of cases.

Suggestive Measures For Judicial Appointments

- **Reforming the MoP**- The ongoing MoP should be reformed and also involve representatives from executive as well as judiciary in decision-making for judges' appointments to maintain checks and balances.
- **Increase diversity**- Adequate representation in judicial appointments should be provided for increasing diversity.
- **Increase transparency-** The opinions of the collegium should be released to the public. Proceedings of the collegium should be documented and recorded in the form of minutes.
- **Expanding eligibility criteria**- Along with the criteria envisaged in the Constitution for the determination of merit and suitability of the candidate. There should be an open invitation for all eligible candidates to apply for the vacancy in the judiciary in the prescribed format.

Follow Law Commission of India recommendations:

- There should be an equal role for the judiciary as well as the executive for the selection and appointments of judges to High Courts and the Supreme Court.
- The retirement age of the Judges of the High Court should be increased to 65 years, and that of the Judges of the Supreme Court should be increased to 68 years.
- As per **Article 124(3)** it contemplates the appointment of judges of the Supreme Court from three source namely, High court judge for 5 years, High court advocate for 10 years, a distinguished jurist.
  - However, in the last fifty years, not a single distinguished jurist has been appointed.
  - From the Bar also, less than half a dozen judges have been appointed.
- It is recommended that suitably meritorious persons from these sources are appointed.

There should be expeditious filling up of vacancies in a continuous manner and along with a collaborative process which involves the executive and the judiciary, and there cannot be a time frame for it. Currently, there is a need to think of a permanent, independent body to institutionalise the regular process with adequate safeguards in preserving the judiciary's independence guaranteeing judicial primacy but not judicial exclusivity. At the same time, it should ensure independence, reflect diversity, and demonstrate professional competence and integrity.

NATIONAL JUDICIAL APPOINTMENTS COMMISSION (NJAC)

About NJAC

It was a proposed constitutional body in India which aimed for reforming the process of judicial appointments. It sought to replace the existing collegium system which vested the power to appoint judges primarily in the hands of senior judges.

NJAC Proposal:

The NJAC was proposed through the 99th Constitutional Amendment Act, 2014, which sought to amend Article 124 and Article 217 of the Indian Constitution.

Composition of NJAC

The NJAC was designed to be a **six-member body**, and consists of the Chief Justice of India, two senior-most Supreme Court judges, the Union Minister of Law and Justice, and two eminent persons nominated by a committee consisting of the Chief Justice of India, the Prime Minister, and the Leader of the Opposition in the Lok Sabha.

Functions of NJAC

The NJAC was tasked to recommend persons for appointment as Chief Justice of India, Judges of the Supreme Court, Chief Justices of High Courts, and other Judges of High Court and transfer of Judges of High Court.

How Legal Challenges Restored Collegium System from NJAC

Striking Down of NJAC:
The NJAC Act, along with the 99th Constitutional Amendment, faced legal challenges, and in a historic judgement in October 2015, the Supreme Court of India declared the NJAC as unconstitutional.

Reasons for Striking Down:
The Supreme Court held that the NJAC undermined the independence of the judiciary and violated the basic structure of the Constitution.

Restoration of Collegium System:
Following the striking down of the NJAC, the collegium system was reinstated as the primary mechanism for judicial appointments.

Fig. 27.2: Legal Challenges Restored Collegium System from NJAC

Issues with NJAC

Appointment Procedures have vague terms	❑ This act required the commission to recommend the senior-most judge of the Supreme Court as the CJI if he considered fit to hold the office. However, it was not defined for appointment what constituted fitness to hold office.
Lack of expertise criteria for eminent persons	❑ The NJAC does not require the eminent person to have any expertise.
Casting vote for CJI is not there	❑ As per **Article 124A,** the NJAC had an even number of members but the Chairperson, who is the Chief Justice of India who had no casting vote. There was no clarity over a tie and thus a deadlock was obvious.
Veto provision	❑ The recommendation could not be made by the NJAC if any two of the six members disagreed.

Selection procedure for High Court judges	❑ The Chief Justice and two senior-most judges of every High Court had to nominate persons to the NJAC for appointment as High Court judges. ❑ The NJAC could also simultaneously nominate persons for appointment as HC Judges. The split may have arisen if two sets of nominees were different. ❑ Thereafter, the NJAC had to **"elicit in writing"** the views of the Governor and the Chief Minister in appointment of HC judges. There was no clarity over whose view would prevail if these two took opposite views.

Reforms Needed in NJAC

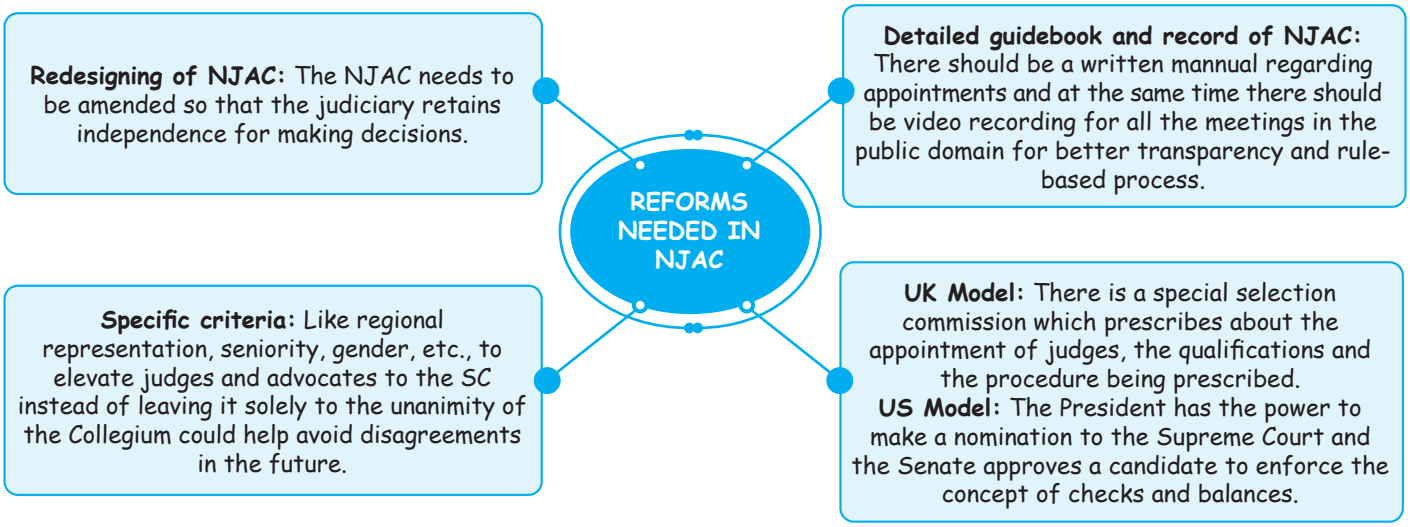

REFORMS NEEDED IN NJAC
Redesigning of NJAC: The NJAC needs to be amended so that the judiciary retains independence for making decisions.
Detailed guidebook and record of NJAC: There should be a written mannual regarding appointments and at the same time there should be video recording for all the meetings in the public domain for better transparency and rule-based process.
Specific criteria: Like regional representation, seniority, gender, etc., to elevate judges and advocates to the SC instead of leaving it solely to the unanimity of the Collegium could help avoid disagreements in the future.
UK Model: There is a special selection commission which prescribes about the appointment of judges, the qualifications and the procedure being prescribed.
US Model: The President has the power to make a nomination to the Supreme Court and the Senate approves a candidate to enforce the concept of checks and balances.

Fig. 27.3: Reforms Needed in NJAC

As the Supreme Court is guardian of the Constitution , and for restoring its credibility its process of appointing judges should be transparent and democratic . In 2015, the Supreme Court in a verdict said "**all is not good with the Collegium"**. Hence, there is a need to reconsider establishing a permanent, independent organisation to institutionalise the process while preserving the judiciary's independence by ensuring judicial primacy, diversity, professional competence, and integrity.

Difference between NJAC and Collegium

What's Collegium System	What's NJAC
❑ Collegium system based on Three Judges Cases. ❑ Under it, appointment of judges are made by Chief Justice of India and four most senior Supreme Court judges. ❑ Has no constitutional backing. ❑ Constitution of India's Article 124 says appointments to be made by President in consultation with judges as President may deem necessary. ❑ Critics say it is a closed-door system which lacks transparency.	❑ NJAC was a body created to end the two- decade-old Supreme Court Collegium system of judges appointing judges. ❑ Was passed by Lok Sabha on August 13, 2014. Was passed by Rajya Sabha a day later. ❑ Will consist of six people - CJI, two senior-most Supreme Court judges, Law Minister and two 'eminent' persons. ❑ Critics say judges in NJAC will need support of others to push a name through. They fear judicial independence being compromised.

ALL INDIA JUDICIAL SERVICE (AIJS)

AIJS is an attempt to reform the judiciary by making the recruitment of judges at district levels uniform for all states. This initiative follows the same model as the All India Services like IAS and IPS, where a central recruitment process is conducted and successful candidates are allocated to different states. This proposal aims to recruit lower judiciary judges centrally and assign them to states. Currently various High Courts and State service commissions hold separate exams to recruit judicial officers.

Background of AIJS

- The idea behind centralised judicial service was **first mooted** in **14th Law Commission's** 1958 **'Report on Reforms on Judicial Administration'.**
- Thereafter the **42nd Constitutional amendment Act** amended **Article 312 (1)** which now empowers Parliament to make laws for creation of one or more All India Services including an AIJS which is common to Union and the States.
  - This amendment helped to ensure uniformity in standard of selection and to attract bright and young talent in judiciary so that fair trial and speedy justice was made available to every citizen throughout the country.
- **The 15th report** of the **Parliamentary Standing Committee** on Personnel, Public Grievances Law and Justice which was held In 2006 backed the idea of a pan-Indian judicial service.

Judiciary's view on AIJS

- The Supreme Court in **All India Judges Association v. Union of India (1992)** directed the Centre to set up an AIJS.
- Thereafter, creation of AIJS was considered and recommended by the first National Judicial Pay Commission, which is also called the **Justice Shetty Commission**.
- Later, judgement was reviewed by the Supreme Court in 1993 where the court gave liberty to the Centre for this initiative.
- Consequently, the Supreme Court in 2017 took suo-motu cognizance of the issue of appointment of district judges, and mooted a **"Central Selection Mechanism".**

Need of AIJS

- It helps in promoting national integration.
- It ends corruption as well as nepotism.
- It helps to improve the efficiency of judicial Administration.
- It helps to induct qualified fresh legal talent.
- It enhances representation of marginalised and deprived sections of society.
- It helps to fill-up vacancies of judges to reduce pendency of cases.

Challenges in Creation of an AIJS

- **Vacancies of Judiciary are unique in every state:** The AIJS fails to address the issue of vacancies adequately because most of the vacancies are present at subordinate level and not at the level of district judges.
- **Structural issues:** The structural issues will plague the lower judiciary by the creation of AIJS.
  - It may not address systematic problems like low pay and inadequate infrastructure.
- **Language Barrier:** The states have highlighted concerns of language and representation.
- **Threatens judiciary's independence:** The creation of AIJS would lead to an erosion of control of the High Court over subordinate judiciary which would in turn affect judiciary's independence.
- **Against federalism:** The creation of AIJS will be against the fundamental power of States to make rules and govern the appointment of district judges.
- **Restrict promotional avenues for State officers:** The promotional avenues would be curtailed for those who had already entered through state services if officers at senior levels are recruited through AIJS, which will affect the manner of State Judicial Service.

Suggestive Measures For Creation of AIJS

- **Funds to be raised:** Additional funds are required to implement an AIJS system.
- **Engaging stakeholders:** The government should involve in a consultative process with the stakeholders to arrive at a common ground.
- **Career growth prospects:** Creation of career growth expectations for lower court judges.
- **Capacity Building:** Capacity Building of lower court judges in the form of continuing legal education is essential.
- **Improve the language barrier issues:** The applicants shall be able to fulfil the desired listing of the state that they need to join along with small language-associated checking must be taken earlier than or in the duration of the interview.

Huge number of pending cases will be solved by recruitment of efficient judges in large numbers for speedy dispensation of cases. It can only be done if AIJS will get a legislative framework by building consensus.

JUDICIAL INFRASTRUCTURE

Judicial Infrastructure is the backbone of any strong and effective justice system. If proper facilities and resources are not available then it is impossible for judges, lawyers, and court staff to carry out the duties in a fair, efficient and timely manner.

Background

- The primary responsibility of development of infrastructure facilities for the judiciary rests with the State Governments.
- The Union Government has been implementing a Centrally Sponsored Scheme for Development of

Infrastructure Facilities since 1993-94 for augmenting resources and financial assistance in prescribed funding patterns to the State Governments in district as well as subordinate courts.

- It covers the construction of court buildings and residential accommodations for judicial officers of district and subordinate judiciary and this scheme is also extended further from 2021-22 to 2025-26.

Judicial Infrastructure in India:

- It includes physical premises of courts, tribunals, lawyers' chambers, digital and human resources etc.
- The term **"efficient judicial infrastructure"** denotes providing equal and free access to justice which can be realised through a "barrier free and citizen friendly environment".
- Currently, the primary responsibility of development of infrastructure facilities for the judiciary rests with the state governments, but the Central Government regularly provides financial assistance under the Centrally Sponsored Scheme.

CURRENT STATUS

Challenges for Judicial Infrastructure

- **Staff Crunch:** Around 30% of sanctioned jailed executive staff posts still lie vacant.
- **Digital Literacy:** Internet rural penetration is around 32.34% whereas urban penetration rate is 99.12%.
- **Shortage of judicial infrastructure:** Around 32% courtrooms have separate record rooms. Around 73% have no video-conferencing facility.
- **Judicial Vacancies:** According to the **Supreme Court's 2018-19 report, UP state** has the **highest vacancy (28%)** which was followed by Bihar(13%).

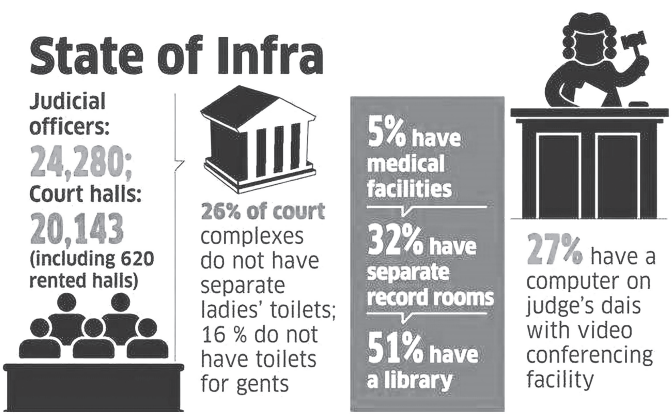

State of Infra
Judicial officers:
24,280;
Court halls:
20,143
(including 620 rented halls)
26% of court complexes do not have separate ladies' toilets; 16 % do not have toilets for gents
5% have medical facilities
32% have separate record rooms
51% have a library
27% have a computer on judge's dais with video conferencing facility

Fig. 27.4: State of Judicial Infrastructure

Need for Reforms in Judicial Infrastructure

- **Infrastructure and productivity in justice delivery:** It is a prerequisite where judicial officers shall efficiently perform their responsibilities while dispensing justice because present backlog cases are around 3.3 crore cases.
- **Improve digitisation program of government:** Due to COVID 19 pandemic and shifting towards digitalization helps to ensure modernization of judicial infrastructure in the country.
- **Lack of accountability:** Most district judges who head trial courts don't pursue development projects due to short-term appointments and transferable jobs among others.
- **Under-utilisation of funds:** Some states transfer part of their funds for non-judicial purposes.
- **Implementation issue:** It is still being carried out in an ad-hoc and unplanned manner owing to lack of a single dedicated agency for the purpose.

Measures to improve Judicial Infrastructure

- Budgetary allocation to the judicial branch should be increased.

National Judicial Infrastructure Authority of India (NJIAI):

- The Chief Justice of India(CJI) has proposed the creation of a NJIAI.

About:

- It will take control of the budgeting and infrastructure development of subordinate courts in the country and It will be established based upon the National Legal Services Authority (NALSA) model, where it would work as a central agency with each State having its own State Judicial Infrastructure Authority.
- The CJI would act as the patron-in-chief of the NJIAI and it would be placed under the Supreme Court of India, unlike NALSA which is under the Ministry of Law and Justice.
- The NJIAI shall consist of a few HC judges as members, and some Central Government officials.

- Recruitment of staff should be done to Improve shortage of staff in judiciary.
- Appropriate provisioning of availability of ramps, tactile pavements, braille notices etc.
- High Courts should be decentralised and more branches should be established.
- Administrative functions should be delegated.
- IT tools can be leveraged for video conferencing, streamlining procedures and for case management systems like e-library of cases.

Other steps taken by government to enhance judicial infrastructure

- eCourts Mission Mode Project for establishment of districts & subordinate courts.

- Fast Track Special Courts (FSTC).
- Launching Of Gram Nyayalaya Online Portal.
- Data Governance Quality Index to assess the data preparedness.

The institution for augmenting and creating state-of-the-art judicial infrastructure is the best gift that we can think of giving to our people and our country since its independence. It will help to increase the availability of well-equipped Court Halls and residential accommodation for judges all over the country. The digitalisation of court rooms will help to improve capabilities and give impetus to digitization.

NATIONAL COURTS OF APPEAL (NCA)

The Attorney General of India (AGI) has pushed the demand for creation of National Courts of Appeal (NCA) to relieve pressure on the Supreme Court. It would act as intermediate appellate courts between the State High Courts and the Supreme Court. It will act as the final court of justice where appeals from the decisions of High Courts and tribunals within their region for civil, criminal, labour and revenue cases have been done.

Origin: This idea was earlier addressed by the Supreme Court itself in 1986 and also by the Law Commission in its 229th report. But its establishment will require a constitutional amendment.

Composition: It consists of 15 judges each.

Significance

- It will help to reduce the pendency of cases in the judiciary.
- It helps to settle matrimonial disputes, rent control and other cases which clogs the Supreme Court.
- It allows the Supreme Court to focus on interpreting constitutional questions of law, references, death sentence cases.

NATIONAL LITIGATION POLICY (NLP)

he National Litigation Policy is based on the recognition that the Government and its various agencies are the predominant litigants in courts and tribunals in the country. Its aim is to transform Government into an Efficient and Responsible litigant. This policy is also based on the recognition that it is the responsibility of the Government to protect the rights of citizens, to respect fundamental rights and those in charge of the conduct of Government litigation should never forget this basic principle.

Background

This policy was formulated by the Ministry of Law and Justice in 2010 to bring down the litigation from government agencies by making them more responsible in filing cases and also the government should not involve in frivolous litigation, especially where the stakes are not high. In 2010 it was seen that 2.5 crore (25 million) legal cases were pending at various levels of the judiciary across the country.

Objective: It lays down guidelines for preventing, controlling and reducing litigation, keeping in view the policy and plans of the Government, in a cohesive and organised manner, Litigation Policy is under consideration.

The salient features of the policy are:

- It ensures government agencies to be responsible while filing cases.
- It directs to place correct facts, all relevant documents before the court and not to mislead them.
- The pending cases with the government as party to be reviewed on priority basis to enable quick disposal.
- It proposes to monitor and review mechanisms to sensitise government in important cases and avoid delay and neglect of the same.

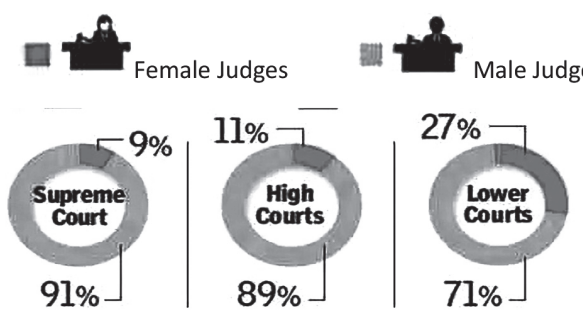
Steps taken to reduce litigation:

- **Legal Information Management & Briefing System (LIMBS):** It is a web-based platform which helps to monitor litigation.
- **Administrative Mechanism for Resolution of Disputes (AMRD):** For the resolution of Inter-Ministerial Departmental disputes. The Commercial Courts Act, 2015 was amended in 2018 for Pre-Institution Mediation and Settlement (PIMS) mechanism.

WOMEN IN JUDICIARY

Women in judiciary relates to the representation and participation of women in the legal system. Women have made significant contributions to the judiciary, but they still face many challenges and barriers that limit their opportunities and potential.

Gender Imbalance in Judiciary



- In SC out of 25, male judges are 22 and only 3 female judges
- In 24 high courts, 605 male judges and 72 female judges out of a total working strength of 677.
- Out of 16,660 judges in lower courts, 12,023 are male and 4,487 female. 150 cases were unknown.

Source: Data from Vidhi's study on gender in judiciary.

Fig. 27.5: Gender Imbalance in Judiciary

Present Status of Women in Indian Judiciary:

- **Supreme Court**
  - **First Woman Judge:** The apex court had its first woman judge in 1989, when **Justice M Fatima Beevi** was appointed after her retirement as a judge of Kerala High Court.
  - **Past Facts:** The Supreme Court since its inception has seen only 11 women judges in the Supreme Court and no woman as Chief Justice of India for that matter.
  - **Current Situation:** The apex court currently has only three women judges:
    - Justice Hima Kohli
    - Justice B V Nagarathna
    - Justice Bela Trivedi
  - **Future Prospect:** Justice Nagarathna is expected to become the country's first woman Chief Justice in 2027.
- **High Courts**
  - **Present number of women judges**: In the High Courts women judges constitute around 11.5%.
  - **Collegium System Recommendations**: The Collegium System has recommended 192 candidates so far, but out of these only 37 people i.e. 19% were women.
- **Subordinate Courts**: The women judicial officers are about 30 percent in the subordinate courts.

Women Judges in the Country

Subordinate Courts:

States	Total Judges	Women Judges	(%) of Women Judges	Reservation for Women
Bihar	1,002	99	9.88	35
Jharkhand	448	62	13.83	05
Gujarat	1,111	177	16	Nil
J&K	219	43	19.65	Nil
UP	1,728	376	21.75	20
MP	1,240	319	25.72	Nil
Himachal	147	39	26.55	Nil
Maharashtra	2,025	596	29.43	Nil
Delhi	489	170	34.76	Nil
All India	16,433	4,704	28.60	-

- **Advocates**: Currently, there are around 1.7 million advocates out of which only 15% are women.
- **Bar Council:**
  - In the State Bar Council, only 2% of the elected representatives are women.
  - There is no woman member in the Bar Council of India.

Significance of Women's Participation in Judiciary

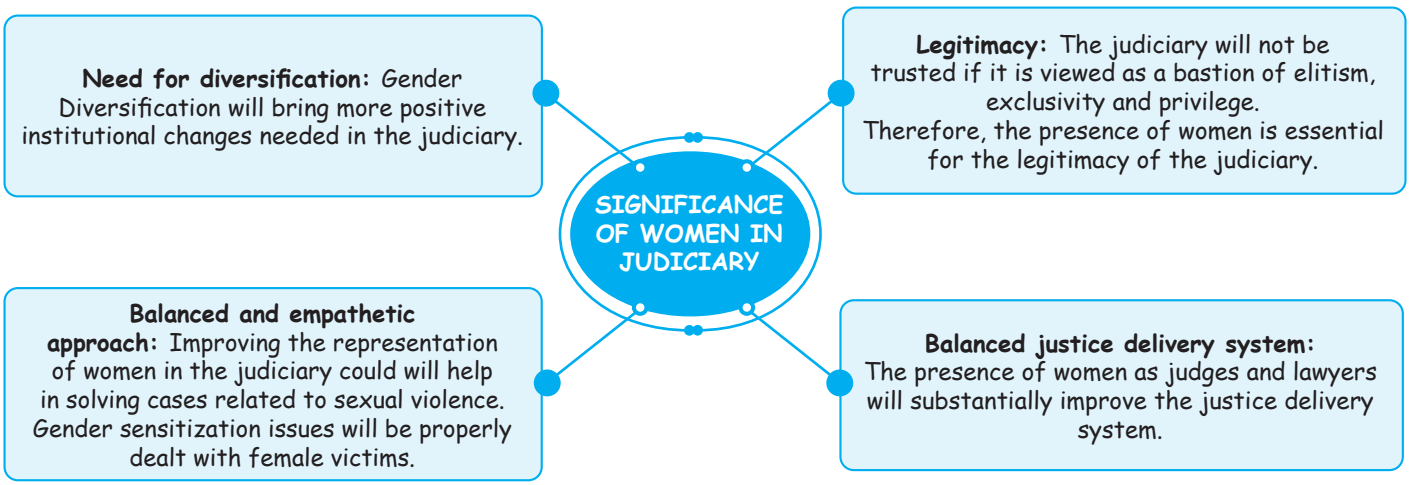

SIGNIFICANCE OF WOMEN IN JUDICIARY
Need for diversification: Gender Diversification will bring more positive institutional changes needed in the judiciary.
Legitimacy: The judiciary will not be trusted if it is viewed as a bastion of elitism, exclusivity and privilege. Therefore, the presence of women is essential for the legitimacy of the judiciary.
Balanced and empathetic approach: Improving the representation of women in the judiciary could will help in solving cases related to sexual violence. Gender sensitization issues will be properly dealt with female victims.
Balanced justice delivery system: The presence of women as judges and lawyers will substantially improve the justice delivery system.

Fig. 27.6: Significance of Women's Participation in Judiciary

Factors behind low Women Representatives in Judiciary

- **Opaque functioning of Collegium System**: Due to the recruitment through an entrance examination, large number of women tend to enter the lower judiciary at the entry level
  - As the higher judiciary follows the collegium system, which tends to be opaque and, therefore, more likely to reflect bias.
- **Reservation for women not at higher levels:** Various states follow reservation policy for women in the lower judiciary, which is missing in the High Courts and Supreme Court.
  - States such as Assam, Andhra Pradesh, Telangana, Odisha and Rajasthan have benefited from such reservation as they now have 40-50% women judicial officers.
- **Patriarchy in Society:** Patriarchy has become the prime reason for underrepresentation of women in judiciary and it is deeply ingrained in society.
- **Various types of problems faced by women lawyers:** Women encounter various problems in the courtroom, such as being sexually harassed, disrespected by the lawyers and judges, and ignored in their views on different cases.
- **Hurdles of Family Responsibilities:** Factors of age and family responsibilities also affects the promotion of women judges from the subordinate judicial services to the higher courts
- **Lack of Judicial Infrastructure:** It has become the most critical barrier for professional women as there are small courtrooms which are overcrowded and cramped and absence of childcare facilities.
- **Shortage of Women in Litigation:** The number of women advocates in litigation is quite low in the Supreme Court and High Court as we see from subordinate courts.

Suggestive Measures for Inclusion of More Women Judges in the Judiciary:

As per the recommendations given by Chief Justice of India N.V. Ramana

- **50% representation:** He has voiced support for 50% representation for women in the judiciary.
- **Inclusion of gender diversification in Legal Education:** There is a need to increase gender diversity while providing legal education.
  - Number of reserved seats should be fixed for women candidates in all colleges and universities which provide law courses.
  - States such as Assam, Andhra Pradesh, Telangana and Odisha have benefited from such reservation as they now have 40-50% women judicial officers.
- **Assurance of basic facilities:** There is a requirement of basic facilities, especially for women which needs to be addressed immediately.
- **Need of separate entity:** National Judicial Infrastructure Corporation should form a separate entity to include various designs in court complexes and create a more welcoming environment in them.

There should be reorientation of the education system in such a way that it teaches work-life balance such as Child-raising and domestic responsibilities must be meaningfully shared by both men and women. There is a need for a higher rate of promotion of women judges from lower courts to higher courts. Judicial benches must encourage young female lawyers' participation in court to break the myth or perception against female lawyers' abilities and capabilities. Affirmative action at the bar by ensuring more women as senior advocates, will encourage more women lawyers' participation.

LIVE-STREAMING OF COURT PROCEEDINGS

- The central idea of live-streaming court proceedings as an extension of the 'open justice' and 'open courts' principle remains largely unrealized in India.
- Currently, only nine out of the 25 High Courts in the country have implemented live streaming, while the Supreme Court restricts it to Constitutional cases.

Background

- The Supreme Court through Swapnil Tripathi vs the Supreme Court of India (2018) had ruled in favour of opening up the apex court for the common public through live-streaming.
- It held that the live-streaming proceedings are part of the right to access justice under Article 21(Protection of Life and Personal Liberty) of the Constitution.
- Gujarat High Court was the 1st High Court to livestream court proceedings followed by the Karnataka High Court.

Significance of Live Streaming

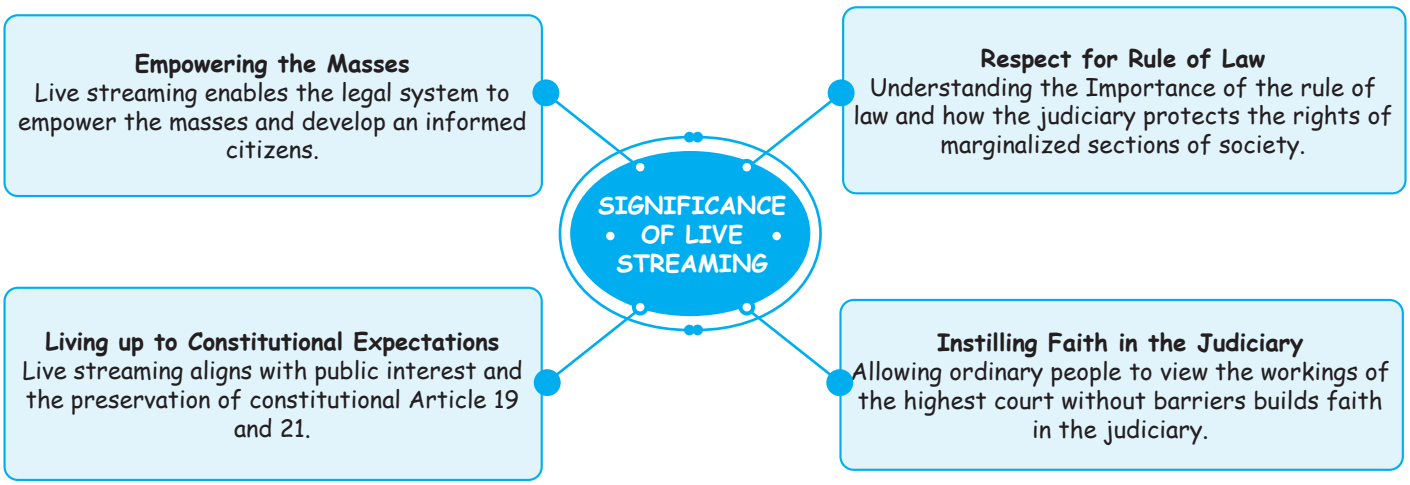

SIGNIFICANCE OF LIVE STREAMING
Empowering the Masses
Live streaming enables the legal system to empower the masses and develop an informed citizens.
Respect for Rule of Law
Understanding the Importance of the rule of law and how the judiciary protects the rights of marginalized sections of society.
Living up to Constitutional Expectations
Live streaming aligns with public interest and the preservation of constitutional Article 19 and 21.
Instilling Faith in the Judiciary
Allowing ordinary people to view the workings of the highest court without barriers builds faith in the judiciary.

Fig. 27.7: Significance of Live Streaming

Concerns

- **Video clips of proceedings from Indian courts** which are already on YouTube and other social media platforms with sensational titles are **leading to the spread of misinformation** among the public.
- The **unauthorised reproduction** of live-streaming videos is another cause for concern as its regulation will be very difficult at the government's end.
- Also, the **commercial agreements with broadcasters** are also concerning.

Recommendations of the Attorney-General of India

- It must be introduced as a pilot project in **Chief Justice of India's (CJI's) court**, and only in **cases related to the Constitution Bench.** The success of this project will determine whether or not live streaming should be introduced in all courts.
- A set of guidelines suggested by the A-G was approved by the SC.
- **However, the AG suggested that the court must retain the power to withhold broadcasting, and also not permit it in cases involving:**
  - Matrimonial matters.
  - Matters involving the interests of juveniles or the protection and safety of the private life of the young offenders.
  - Matters of National security.
  - To ensure that victims, witnesses or defendants can depose truthfully and without any fear.
  - Special protection must be given to vulnerable or intimidated witnesses.

CONCLUSION

Live Streaming of Court proceedings is a step towards transparency and greater access to the justice system. As it provides citizens with the right to information in the age of technology for the matters of constitutional and national importance available for public viewership. At the same it should be kept in mind that it should be not in commercial nature and strict punishment must be there for unauthorised reproduction of videos. It will provide thrust and belief towards judiciary which is an important pillar of democracy.

Decentralisation of Democracy: Panchayati Raj

28

"If we would see our dream of Panchayati Raj, i.e., true democracy realized, we would regard the humblest and lowest Indian as being equally the ruler of India with the tallest in the land."

–Mahatma Gandhi

INTRODUCTION

Panchayati-Raj is a local self-governance system in rural India, with the term "Panchayati Raj" signifying **"rule by five."** It is rooted in the Ancient political history of the Indian sub-continent, where five elder villagers made decisions concerning the village's upkeep and growth. Post-independence, the Panchayati Raj framework was given constitutional status through the 73rd constitutional amendment in 1992, featuring a three-tier administrative structure aimed at rural development.

Its objective is to foster local self-governance at the district, zonal, and village levels, while also promoting grassroots democracy, empowering rural communities, and facilitating local development and administration. Empowering the people present at the lowest level with the devolution of powers is based on the principle of Subsidiarity.

Principle of Subsidiarity

The principle of subsidiarity is a political concept that emphasizes decentralization and local decision-making in governance. It suggests that matters should be handled by the smallest, lowest, or least centralized competent authority rather than a higher or more central authority. The devolution of powers to PRIs and Municipalities by State governments is also based on this principle.

PANCHAYATI RAJ EVOLUTION

The history of Panchayat Raj in Modern India can be categorized into distinct periods when viewed analytically:

- **British Period:** Under British rule, village panchayats lost their autonomy and grew weaker. However, Representative local institutions began to develop in 1870, largely due to **Mayo's resolution** in 1870, which expanded their powers and responsibilities. Local self-governance gained momentum with the appointment of the **Royal Commission on Decentralization** in 1907, chaired by **C.E.H. Hobhouse**. The commission recognized the importance of village panchayats. Later on, the Montagu Chelmsford reforms of 1919 transferred local government to the provinces.

ARTICLE 40

- The State shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.

- **Post-Independence Period:** After the Indian Constitution came into effect, **Article 40** mentioned Panchayats, and granted State legislatures the authority to legislate on matters related to local self-government.

Notably, there was opposition to the inclusion of panchayats in the Constitution, primarily from **B.R. Ambedkar,** who saw them as a caste-based institution and a tool for exploiting marginalized classes. Eventually, panchayats found their place in the Constitution under **Article 40** of the Directive Principles of State Policy.

National Panchayati Raj Day:

- National Panchayati Raj Day is celebrated in India on April 24 every year. It commemorates the day when the Panchayati Raj System was introduced in the country.
- The first National Panchayati Raj Day was declared in 2010 by then Indian Prime Minister Manmohan Singh.
- The Constitution of India recognizes Panchayats as "Institutions of self government". There are nearly 2.63 lakh Panchayats and about 31.47 lakh elected representatives (ERs) of PRIs. Of these, 14.54 lakh (about 46.20%) are women.

Post-Independence Development Initiative:

- Following India's independence, the **Community Development Programme (CDP)** in 1952 and the **National Extension Service (NES)** in 1953 were initiated. These programs encountered challenges, such as bureaucracy apathy, political interference, and lack of community participation.
- In January 1957, a committee led by **Balwant Rai G Mehta** was formed to review and enhance the CDP and NES. **Rajasthan** pioneered Panchayati Raj in 1959 based on this committee's recommendations, with other States like Andhra Pradesh adopting it later.
- In 1992, the 73rd Constitutional Amendment Act was enacted, formalizing Panchayati Raj institutions, which came into effect on **April 24, 1993, celebrated as National Panchayati Raj Day.**

VARIOUS COMMITTEES RELATED TO PANCHAYATI RAJ

S.No.	Name of the Committee	Major recommendations of the Committee
1.	Balwant Rai Mehta Committee, 1957	❑ The Panchayati Raj system should comprise **three tiers**: Gram Panchayat, Panchayat Samiti, and Zila Parishad. ❑ The Gram Panchayat should consist of directly elected representatives, while the Panchayat Samiti and Zila Parishad should involve indirectly elected representatives. ❑ The Panchayat Samiti should serve as the executive body, while the Zila Parishad assumes an advisory and supervisory role. The Zila Parishad is chaired by the District Collector. ❑ Sufficient resource allocation should be made to enable these bodies to fulfill their duties and responsibilities effectively. ❑ Political Parties to be debarred from participating in elections.
2.	Ashok Mehta Committee, 1977	❑ It proposed a **two-tier system** comprising the Zila Parishad at the district level and the Mandal Panchayat as a cluster of villages. (Different from BR Mehta Committee) ❑ The Zila Parishad should function as the executive body taking on the responsibility of district-level planning. ❑ Zila Parishad and Mandal Panchayat should be endowed with mandatory taxation powers, allowing them to independently generate financial resources. ❑ Political Parties must be allowed to contest elections (in contrast to Balwant Rai Mehta Committee). As a result, West Bengal became the first State to directly allow political parties to contest elections in the local bodies. ❑ Premature dissolution to be followed by election within 6 months. ❑ Reservation of seats for SCs/STs. ❑ A separate ministry of Panchayati Raj in all State governments.
3.	G.V.K. Rao Committee, 1985	❑ Zila Parishad as the paramount institution within the framework of democratic decentralization. ❑ Both the district and the lower tiers of the Panchayati Raj system should be designated with well-defined roles in planning, executing, and supervising rural development programs. ❑ A new position of **District Development Commissioner** to be established who would serve as the Chief Executive Officer of the Zila Parishad. ❑ Regular and scheduled elections should be conducted at all levels of the Panchayati Raj system
4.	L.M. Singhvi Committee, 1986	❑ **Constitutional recognition** of the Panchayati Raj system. ❑ Incorporation of constitutional provisions to ensure free and fair elections within these systems. ❑ Village Panchayats should receive increased financial resources to support their activities. ❑ Establishment of **judicial tribunals** in each State which will be responsible for adjudicating election-related issues and other relevant matters.
5.	Thungon Committee, 1988	❑ A three-tier structure, with panchayats at the village, block, and district levels. ❑ Prioritized Zilla Parishad and advised it to play a central role as the primary planning and development agency in the district. ❑ District collector should be the Chief Executive Officer of the Zilla Parishad. ❑ PRIs should have a **fixed tenure of five years**. ❑ A comprehensive **list of subjects** for Panchayati Raj should be prepared and integrated into the Constitution. ❑ Seats in all three tiers should be reserved for Scheduled Castes (SC), Scheduled Tribes (ST), and Women (first committee to recommend reservation for women also). ❑ Each State should establish a State Finance Commission.

6.	Gadgil Committee, 1988	❑ Direct elections for members of the Panchayats at all three levels. ❑ Reservation for SCs, STs, and women is proportionate with their population. ❑ A list of subjects for PRIs should be specified in the constitution. ❑ PRIs should be empowered to levy, collect, and appropriate taxes and duties. ❑ Establishment of a State Finance Commission and State Election Commission.

Constitutional Recognition of Panchayati Raj

In India, the Panchayati Raj functions as a system of local governance. This system comprises three tiers: **Gram Panchayat** at the **village level, Mandal Parishad** or **Block Samiti** of **Panchayat Samiti** at the **block level,** and **Zila Parishad** at the district level. It was given constitutional status in 1992 through the 73rd amendment to the Indian Constitution.

Presently, the Panchayati Raj system is implemented in all States **except Nagaland, Meghalaya, and Mizoram,** as well as in all Union Territories except Delhi, due to unique social, cultural, and economic considerations in these regions.

Key Features of the 73rd Amendment Act of 1992

- **Gram Sabha:** The Gram Sabha, composed of individuals registered in the electoral rolls of the village within the Panchayat's jurisdiction, forms the foundational element of the Panchayati Raj System.
  - Under **Article 243A**, a Gram Sabha may exercise such powers and perform such functions at the village level as the Legislature of a State may provide by law.
- **Three-tier System: Article 243B** provides for the three-tier Panchayat structure, encompassing the village, intermediate, and district levels.
  - It was mandated in every State to ensure uniformity in Panchayati Raj institutions across the nation. However, Panchayats at the Intermediate level may not be constituted in a State having a population **not exceeding twenty lakhs.**
- **Election of Members and Chairpersons (Article 243C):** Members of Panchayats at all three levels are directly elected by the people, while the chairpersons of the intermediate and district Panchayats are elected indirectly from among the elected members. Additionally, the method of election of Chairperson at the village level is determined by the State government.
- **Reservation of Seats: Article 243D** provides for the reservation of seats for people belonging to **Scheduled Castes (SC) and Scheduled Tribes (ST)** in proportion to their population in each Panchayat. **Additionally, one-third of the total seats are reserved for women**. State legislatures are empowered to enact further reservations in favor of backward classes.
- **Duration of Panchayat: Article 243E** mandates that Panchayats have a standard **five-year term of office** but can be dissolved before completing their term. If dissolved, the newly elected Panchayat continues for the remainder of the previous Panchayat's term. However, if the remainder period (for which the dissolved panchayat would have continued) is less than six months, there is no need to hold any election for constituting the new panchayat for such a period.
- **Disqualification of Member:** Under **Article 243F,** A person shall be disqualified for being chosen as, and for being, a member of a Panchayat:
  - If the member faces disqualification according to any currently applicable law so enacted by the State Legislature.
  - No individual should face disqualification based on their age being below twenty-five years, as long as they have reached the age of twenty-one years.
- **Powers and Functions of Panchayats:** Under **Article 243G,** State Legislatures may by law endow Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government.
  - Such laws may contain provisions for the devolution of power and responsibilities like Panchayats can create economic development and social justice plans, implement central and State government schemes, and have authority over employment and local development activities.
- **Finances:** Under **Article 243H,** State legislatures are authorized to allow Panchayats to levy and collect taxes, assign State-collected taxes to Panchayats, grant aid from the State's consolidated fund, and establish funds to manage Panchayat finances.
- **Finance Commission: Article 243I** provides for the Finance Commission to be appointed by the Governor to assess the financial status of the Panchayats. It recommends principles for tax distribution between the State and Panchayats, as well as the specific taxes, duties, tolls, and fees that Panchayats can collect.

- **Audit of Accounts:** Under **Article 243J,** State legislatures can specify the rules for maintaining and auditing Panchayat accounts.
- **State Election Commission: Under Article 243K,** a State Election Commission is established, responsible for overseeing the preparation of electoral rolls and conducting Panchayat elections.
- **Application to Union Territories: Article 243L** provides that the amendment may be applied to Union Territories, but the President can make exceptions or modifications as required.
- **Exempted States and Areas: Article 243M** States that the act does not apply to **Nagaland, Meghalaya, and Mizoram**, as well as certain other areas, including scheduled and tribal areas. However, under specified conditions, **Parliament** may extend these provisions to scheduled and tribal areas.
- **Continuance of Existing Laws and Panchayats: Article 243N** States that the all State laws related to Panchayats remain in force for a year after the act's enactment. Pre-existing Panchayats continue their terms unless dissolved by the State legislature.
- **Bar to Interference by Courts in Electoral Matters: Article 243O** restricts courts from intervening in Panchayat elections, declaring that the constitutionality of constituency delimitation or seat allocation laws cannot be challenged in court.
  - It also mandates that election challenges must be presented as election petitions according to State legislature guidelines.

IGNITE YOUR MIND

Imagine your school is a village, and the students are the residents. How would you organize a 'Student Panchayat' to address common concerns and make decisions for the well-being of the 'village'?

STRUCTURE OF PANCHAYATI RAJ

The **73rd Amendment Act** establishes a three-tier system of Panchayati Raj in every State, which includes Panchayats at the **village, intermediate, and district** levels. This provision ensures uniformity in the structure of Panchayati Raj across the country. However, a State with a population **not exceeding 20 lakh** may choose not to constitute Panchayats at the intermediate level.

Tier-1: Gram Panchayat

- The Gram Panchayat is the most basic unit, with a Sarpanch serving as its head.
- Members of the Gram Panchayat are elected for five-year terms by the members of the Gram Sabha, a general assembly of villagers.

Tier-2: Block Level Panchayat or Panchayat Samiti

- The Panchayat Samiti, also known as the Block Panchayat, operates at the **Tehsil level** and is a local government body.
- It administers and oversees the villages within the tehsil, which collectively form a **"development block."** The Panchayat Samiti serves as the intermediary between the Gram Panchayat and the district administration.

Tier-3: Zila Parishad

- Zila Parishad is the governing body at the district level within the Panchayati Raj system.
- The chief administrator of the Zila Parishad is typically an officer from the **Indian Administrative Service (IAS) cadre** and is the highest-ranking Panchayati Raj official at the district level.

These three tiers work together to manage local governance, with the Gram Panchayat focusing on village-level matters, the Panchayat Samiti overseeing a group of villages within a tehsil, and the Zila Parishad coordinating activities and governance at the district level.

Elections to Panchayati Raj Institutions

Following the adoption of the Constitution and the implementation of the Balwant Rai Mehta Committee's recommendations, the formalization of Panchayat elections occurred in most states. The **Mehta Committee proposed 'Democratic Decentralisation,'** advocating direct elections for Gram Panchayats and indirect elections for Block Samitis and Zilla Parishads. The final design and procedures for Panchayat elections were established through the 73rd Constitutional Amendment Act in 1992.

The election process for Panchayati Raj Institutions involves **direct elections for members at all levels,** while chairpersons at intermediate and district levels are indirectly elected from members. The election of village-level chairpersons is **determined by the State Government,** and Gram Panchayat Pradhans and members are elected directly through secret ballot by the Gram Sabha members.

The Sarpanch, or Gram Panchayat president, is elected by ward members as per the State Act, with a **five-year term**. All residents over 18 in the Gram Panchayat's territory can vote. Panchayat seats are filled through direct elections from territorial constituencies in the Panchayat area.

State Election Commission

- Articles 243K and 243ZA talk about Panchayat and Municipal elections, respectively. Both articles state that the superintendence, direction, and control of electoral roll preparation and election conduct for Panchayats/Municipalities rests with the State Election Commission mentioned in **Article 243-K.**
- The State Election Commission (SEC), a **constitutional body in India,** conducts elections for municipalities and Panchayats following the 73rd and 74th amendments.
- Article 243K establishes the SEC, with its tenure and appointment governed by state legislation. The Governor appoints the State Election Commissioner on the advice of the Council of Ministers. However, the removal from office follows the same process as for a High Court Judge.
- The **2nd ARC suggested** appointing the State Election Commissioner through a collegium consisting of the Chief Minister, the Speaker, and the Leader of the Opposition. It also advocated for creating an institutional mechanism for coordination and resource sharing between the Election Commission of India and the State Election Commissions.

Eleventh Schedule of the Indian Constitution	
Following 29 functional items are placed within the purview of panchayats:	
1	Agriculture, including agricultural extension
2	Land improvement, implementation of land reforms, land consolidation, and soil conservation
3	Minor irrigation, water management, and watershed development
4	Animal husbandry, dairying, and poultry
5	Fisheries
6	Social forestry and farm forestry
7	Minor forest produce
8	Small-scale industries, including food processing industries
9	Khadi, village, and cottage industries
10	Rural housing
11	Drinking water
12	Fuel and fodder
13	Roads, culverts, bridges, ferries, waterways, and other means of communication
14	Rural electrification, including distribution of electricity
15	Non-conventional energy sources
16	Poverty alleviation program
17	Education, including primary and secondary schools
18	Technical training and vocational education
19	Adult and non-formal education
20	Libraries
21	Cultural activities

22	Markets and fairs
23	Health and sanitation including hospitals, primary health centers, and dispensaries
24	Family welfare
25	Women and Child Development
26	Social welfare, including the welfare of the handicapped and mentally retarded
27	The welfare of the weaker sections, and in particular, of the scheduled castes and the scheduled tribes
28	Public distribution system
29	Maintenance of community assets

COMPULSORY AND VOLUNTARY PROVISIONS UNDER 73RD AMENDMENT ACT (1992)

Taking into consideration the level of development, population composition and socio-economic conditions of different States, the **73rd Amendment Act** segregated various provisions as Compulsory and Voluntary Provisions to suit the relative conditions of each State.

Compulsory Provisions	Voluntary Provisions
❑ Implementation of the **Gram Sabha** structure in villages. ❑ Establishment of Panchayats at three levels: Village, Intermediate, and District. ❑ Direct elections for all seats in village, intermediate, and district panchayats. ❑ Indirect elections for the position of Chairperson in intermediate and district panchayats. ❑ Granting voting rights to both directly and indirectly elected chairpersons and members of panchayats. ❑ Establishing a minimum age requirement of 21 years for contesting panchayat elections. ❑ Reservation of seats for Scheduled Castes (SCs) and Scheduled Tribes (STs) in panchayats at all three levels. ❑ Mandating one-third of seats for women, both as members and chairpersons, in panchayats at all levels. ❑ Prescribing a five-year tenure for panchayats at all levels and holding fresh elections within six months in case of panchayat supersession. ❑ Setting up a State Election Commission to oversee and conduct elections for panchayats.	❑ Empowering the Gram Sabha at the village level with specific powers and functions. ❑ Defining the election process for the chairperson of the village panchayat. ❑ Ensuring representation for village panchayat Chairpersons in intermediate or district panchayats. ❑ Providing representation for intermediate panchayat chairpersons in district panchayats. ❑ Allocating seats for members of Parliament and State legislature in panchayats based on their constituencies. ❑ Reserving seats, both for members and chairpersons, for **backward classes** in panchayats at all levels. ❑ Granting autonomous status and authority to panchayats for self-governance. ❑ Delegating powers and responsibilities to panchayats for economic development and social justice, including functions listed in the Eleventh Schedule of the Constitution. ❑ Authorizing panchayats to levy, collect, and manage taxes, duties, tolls, and fees. ❑ Transferring State-collected taxes, duties, tolls, and fees to the panchayats. ❑ Allocating grants-in-aid to panchayats from the State's consolidated fund. ❑ Establishing funds to manage all financial resources of the panchayats.

PANCHAYAT (EXTENSION TO SCHEDULED AREAS) ACT OF 1996

Part IX of the Indian Constitution, governing Panchayats, doesn't apply to **Fifth Schedule** areas but can be extended by Parliament with exceptions. The **Panchayat Extension to Scheduled Areas (PESA) Act** of 1996, based on **Bhuria Committee** recommendations, promotes tribal self-governance in scheduled areas.

Provisions of the PESA Act

- **Gram Sabha:** The PESA Act establishes the **Gram Sabha** as the highest decision-making body in a scheduled area. It serves as a forum for community participation in the development process, responsible for identifying development projects, creating development plans, and overseeing their implementation.
- **Village-level Institutions:** The Act mandates the creation of village-level institutions to carry out developmental activities and provide essential services to the community. These institutions include the Gram Panchayat, Gram Sabha, and Panchayat Samiti.
- **Powers and Functions:** PESA legislation grants significant powers and functions to the Gram Sabha and Gram Panchayat concerning **natural resource management, environmental protection, and economic activity regulation**.
- **Consultation:** The Act requires that the Gram Sabha be consulted before initiating any development projects or activities in the Scheduled Areas.
- **Funds:** The Act allows for the transfer of funds to the Gram Sabha and Gram Panchayat to support their functions.
- **Land:** PESA provides for the protection of land rights for tribal communities in the Scheduled Areas. It mandates obtaining their **consent** before acquiring or transferring any land.
- **Cultural and Social Practices:** The Act **safeguards the cultural and social practices** of tribal communities in the Scheduled Areas and prohibits interference in these practices.

ACHIEVEMENTS AND LIMITATIONS OF PESA ACT

Achievements	Limitations
Empowerment of Tribal Communities: The PESA Act has empowered tribal communities by providing them with a greater role in the decision-making process related to development through the Gram Sabha and the Gram Panchayat. **Protection of Land Rights:** The Act safeguards the land rights of tribal communities by necessitating the consent of the Gram Sabha before any land is acquired or transferred. This provision helps prevent the exploitation of tribal communities by external parties. **Preservation of Cultural and Social Practices:** PESA has played a significant role in preserving the cultural and social practices of tribal communities in Scheduled Areas, protecting their traditions and ways of life. **Promotion of Decentralization:** The Act promotes decentralization by granting more powers and functions to the Gram Sabha and the Gram Panchayat, allowing for local decision-making and governance. **Improved Access to Basic Services:** PESA has contributed to enhancing access to essential services such as education, healthcare, and safe drinking water in the Scheduled Areas. This has led to improvements in the overall quality of life for tribal communities in these regions.	**Limited Coverage:** The Act only applies to Scheduled Areas, leaving tribal communities in non-scheduled areas without the benefits and protections it offers. **Lack of Awareness:** Many tribal communities in Scheduled Areas are not adequately informed about the rights and entitlements granted by the PESA Act, which can hinder its effective implementation. **Limited Resources:** Gram Sabhas and Gram Panchayats often face resource constraints, making it challenging to carry out their functions effectively, particularly in terms of implementing development projects. **Lack of Trained Personnel:** Many Gram Sabhas and Gram Panchayats lack access to trained personnel who can assist in their decision-making processes and governance activities. **Political Interference:** Despite the requirement for consultation with the Gram Sabha, decisions made by these bodies are sometimes not respected and are subject to political interference, undermining the autonomy and authority of these institutions. **Conflicts with Other Laws:** The PESA Act may sometimes conflict with other laws, such as the Forest Rights Act and the Wildlife Protection Act, leading to challenges in its consistent and harmonious implementation.

FINANCIAL DEVOLUTION TO PANCHAYATI RAJ INSTITUTIONS

The actual strength of Panchayati Raj institutes, in terms of both autonomy and efficiency, heavily relies on their financial stability, including their ability to generate their own resources. In India, Panchayats receive funds through various means:

- **Grants from the Union Government:** These grants are provided based on the recommendations of the Central Finance Commission, in accordance with **Article 280** of the Constitution.
- **Devolution from the State Government:** Panchayats receive funds allocated by the State Government as per the recommendations of the State Finance Commission, as outlined in **Article 243I.**
- **Loans/Grants from the State Government:** Panchayats may also receive financial assistance in the form of loans or grants from the State Government to support their development projects and initiatives.
- **Programme-Specific Allocation:** Under Centrally Sponsored Schemes and Additional Central Assistance, specific funds are allocated to Panchayats for various development programs and projects.
- **Internal Resource Generation:** Panchayats have the authority to generate resources internally through both tax and non-tax means. These resources are crucial for the financial sustainability and independence of these institutions. Example: Taxation on Local weekly market, collecting fees by allowing farmers to till the Gram Samaj Land.

IGNITE YOUR MIND

True democracy cannot be worked by twenty people sitting at the center. It has to be worked out from below by the people of every village. Imagine you are a member of a village Panchayat. What initiatives would you propose to address the specific needs and challenges of your community?

ACHIEVEMENTS OF PRI'S

- **Deepen the roots of democracy:** The introduction of local governments has helped to deepen the roots of democracy in India where an individual present in a remote village finds himself/herself part of the decision-making process.
- **Promoted healthy competition:** The system has created healthy competition among the States and improved democratic decentralization. States are competing with regard to funds devolution, reservation quota for women, etc.
- **Improved implementation of schemes:** PRI ensures effective coordination between government programs and voluntary agencies leading to improved implementation of schemes at village level.
- **Increased representation of marginalised sections:** It has increased representation of marginalized sections of the society such as scheduled castes, scheduled tribes and women as well. As of 2020, over 46% of the members of PRIs are women. 21 States in India have implemented a policy of reserving 50% of seats for women in PRIs.
- **Developed villages:** The system plays a vital role in the village's local government to develop the village in areas such as health, women's development, primary education, child development, women's participation in local government, and agricultural development.

FACTORS CONTRIBUTING TO THE INEFFECTIVE PERFORMANCE OF PRI

Autonomy:

- Limited devolution of subjects/powers (11th and 12th schedule) by the state governments resulted in half hearted reforms.
- Absence of a clear demarcation of functions (6th report of 2nd ARC) limits the efficacy.
- Delay in realization of the constitutional mandate. Example: as per reports, as of March 2023, only 9 states have formed the 6th State Financial Commission
- Critics question the independence and autonomy of the State Election Commission (SEC). E.g., senior bureaucrats appointed as election commissioners.
- **Financial autonomy remains elusive:**
  - Inordinate delays in releasing bill payments, hampering development.
  - Financial woes dampen the morale of elected representatives. E.g., rampant delays in payment of salaries, etc.
  - As per the economic survey, PRIs depend on devolved funds for 95% of their revenues; PRIs are ineffective in taxing their constituents, etc.

Authority:

- Lack of powers to hold the cutting-edge bureaucracy accountable (Panchayat Secretaries) leads to bureaucratic apathy.

- Dominance by parastatal bodies. Example: SPVs under the smart cities mission; District Rural Development Agency, etc.
- The functioning of PRIs smacks of ad-hocism. Example: the absence of a model code of conduct for bureaucrats.
- The Gram Sabhas, especially powerful under the PESA, have become cosmetic in nature. E.g., Women, SC/ST, etc., vulnerable members are not invited to Gram Sabha meetings.

Accountability:

- Lack of accountability has marred the objectives of PRIs. Example: **Mani Shankar Aiyer committee** held that Panchayati Raj has become Sarpanch Raj.
- PRIs, DPCs & MPCs lack the capacity to make developmental plans, conduct social audits, etc.
- Stronghold of patriarchal values. E.g., prevalence of **"Panchayat Patis".**
- Negation of the developmental/planning role of the Gram Sabha. E.g., Cleavages in Gram Sabha on caste/religious lines.

MEASURES TO IMPROVE PANCHAYATI RAJ INSTITUTIONS

Adequate steps can be taken to make the Panchayats truly representative:

- Ensuring political autonomy by devolving powers under the 11th schedule and 12th schedule.
- A dedicated cadre should be recruited for the PRIs.
- Training and capacity building at the cutting-edge level. E.g., modules for social auditing.
- Timely conducting elections and making constitutional bodies like SEC, and SFC more autonomous.
- Reforms related to Kerala model:
  - Appointment of Panchayati Ombudsman.
  - Complete activity and responsibility mapping of panchayats.
  - Prescribe objective conditions for the dissolution of Panchayats.
  - Developing a code of conduct for bureaucrats and officers.
- Financial innovation (Green Masala Bonds by Indore Municipality);
  - City Economic Councils (NITI Ayog) to attract investments;
  - Monetisation of assets; credit rating of PRIs;
  - Devolution of untied funds from Union Finance Commission etc., will strengthen local finances.

MANI SHANKAR AIYAR COMMITTEE RECOMMENDATIONS

The Aiyar Committee Report was released on the occasion of the 20th anniversary of the Constitution's 73rd Amendment passed in 1992. The Aiyar Report on Panchayats States, **"Gram Sabha, the form of direct democracy,** is the foundation on which the whole edifice of local governance is built.

IMPORTANT RECOMMENDATIONS OF THE COMMITTEE

- **Informed Participation in Gram Sabhas:** Encourage informed participation in Gram Sabhas rather than just physical presence by providing relevant information and awareness programs to members. Ensure that Gram Sabha meetings are mandatory and held regularly to promote active engagement.
- **Financial Autonomy for Panchayats:** Grant Panchayats the authority to raise their own funds through the collection of taxes. This financial autonomy can empower them to address local development needs effectively.
- **Training for Panchayat Heads and Members:** Provide training in accounting and auditing to Panchayat heads and members. This will equip them with the necessary financial management skills to handle their responsibilities efficiently.
- **Effective Control of Deputed Employees:** Ensure that Panchayats have effective control over employees deputed to them by the State government, including responsibility for their salary payments. This can enhance the accountability and efficiency of local government staff.
- **Devolution of Power at the State Level:** Promote the devolution of power at the State level to empower PRIs to function more effectively. This can involve delegating authority over specific subjects to PRIs, aligning with the State subject of Part VII of the Constitution.
- **Single Ministry for Local Governance:** Create a unified ministry responsible for overseeing both Panchayats and urban local bodies, ensuring better coordination and streamlined governance. This integrated approach can fall under the Ministry of Panchayat Raj and the Ministry of Urban Development.
- **Ombudsman for Panchayats:** Set up an ombudsman system for Panchayats in all States to address grievances, disputes, and issues related to the functioning of PRIs, ensuring accountability and fairness.

ESTABLISHING EDUCATIONAL CRITERIA FOR CONTESTING PANCHAYAT ELECTIONS

The **73rd Constitutional Amendment Act** did not provide for any educational criteria for the citizens to contest for the elections of any tier of the Panchayati Raj. However, with time, several States like **Rajasthan and Haryana** passed laws for setting minimum educational qualifications for contesting elections. This created a debate about whether such a criterion is needed or not.

Arguments Against the Criteria	Arguments in Favour of the Criteria
❑ **Limiting Electoral Participation:** It excessively limits a citizen's ability to participate in elections, thus challenging the fundamental principles of a democratic republic. ❑ **Disproportionate representation:** This disproportionately disenfranchises the more marginalized segments of society, including women, Dalits, and the economically disadvantaged. ❑ **Preference for Administration over Representation:** Imposing educational qualifications for elections is based on the assumption that those with formal education will be more capable of governing local bodies. This approach reveals a preference for administration over representation. ❑ **Contradiction to the purpose:** This approach contradicts the very purpose of the 73rd and 74th Amendments, which aimed to create representative panchayats and municipalities with adequate inclusion of SCs, and STs. ❑ **Inequality in Qualification Requirements:** Such restrictions are not applicable for parliamentary or assembly elections. In fact, in the current Lok Sabha, 13% of MPs lack matriculation qualifications.	❑ **Support of Supreme Court: In the Rajbala case,** the Supreme Court ruled that the establishment of educational qualifications is pertinent for the "enhanced administration of panchayats." • The bench emphasized that both the **'Right to Vote' and 'Right to Contest' are not Fundamental Rights** but rather constitutional rights of citizens, allowing for the imposition of minimum qualifications for electoral candidacy. ❑ **Reducing Influence and Misinformation:** Implementing minimum educational qualifications reduces the likelihood of citizens being influenced or misled by others. ❑ **Encouraging Literacy Prioritization:** The introduction of educational requirements would serve as an incentive for society to prioritize literacy. ❑ **Literate Leaders for Human Resource Development:** An educated individual is an asset for a nation. When the leaders lack literacy, it can result in improper framing and implementation of the development initiatives.

GOVERNMENT INTERVENTIONS TO STRENGTHEN PRIs

❑ **Audit Online:** The **Ministry of Panchayati Raj** launched **Audit Online in 2020,** enabling online audits of Panchayat accounts.

❑ **SWAMITVA Scheme:** The **SWAMITVA Scheme**, which stands for "Survey of Villages and Mapping with Improvised Technology in Village Areas," aims to provide records of property rights to rural households in inhabited villages and issue property cards to property owners. This initiative enhances PRIs with improved data on land ownership.

❑ **Sabki Yojana Sabka Vikas:** The **People's Plan Campaign,** also known as **"Sabki Yojana Sabka Vikas,"** was initiated by the central government in September 2019. It seeks to formulate **Gram Panchayat Development Plans (GPDPs)** and make them accessible on a website for public scrutiny regarding the status of various government flagship schemes.

❑ **Rashtriya Gram Swaraj Abhiyan:** It is a centrally sponsored scheme focused on enhancing the capacity of Panchayati Raj Institutions (PRIs) for more effective rural local governance, catering to local development needs.

❑ **e-GramSwaraj portal:** The Ministry of Panchayati Raj has introduced **e-GramSwaraj,** a user-friendly web-based portal, to bolster e-Governance within PRIs nationwide. This portal consolidates the planning, accounting, and monitoring functions of Gram Panchayats.

❑ **National Panchayat Awards:** The **National Panchayat Awards** program identifies the best-performing Panchayats based on various criteria and indicators.

Successful Case Studies

Bellandur Gram Panchayat:

- In the initial two years of the chairperson's term in Bellandur Gram Panchayat, located in Karnataka, a significant digital transformation occurred. The chairperson collaborated with a software company to computerise the panchayat's records, financial accounts, and property tax collection system.
- Furthermore, they initiated the broadcasting of gram panchayat meetings through the local cable operator. This modernization led to an increase in revenue generated from land sales taxation and brought transparency to the panchayat's financial operations. Consequently, the Gram Panchayat was able to reinvest its own funds into enhancing the local infrastructure and expanding services.

Gopalpura Gram Panchayat:

- The Gopalpura Gram Panchayat has embarked on an ambitious mission to transform the village into a model community. To achieve this goal, the panchayat has engaged professional consultants to create a comprehensive master plan.
- The primary objectives of this master plan encompass optimizing the utilization of resources and addressing land requirements for the next two decades, devising sustainable development strategies, enhancing the quality of life for residents, and formulating detailed proposals to implement these strategies. The master plan utilizes 2005 as the base year and sets the target year as 2055.

CONCLUSION

Promoting local governance via Panchayati Raj Institutions (PRIs) is key to empowering communities, enhancing accountability, and building local human resources. To reinforce their role as effective planning bodies and true representatives of the people, it's crucial to reform PRIs through a comprehensive stakeholder approach.

Decentralisation of Democracy: Municipalities

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Urban local bodies serve as the backbone of urban governance, as they oversee the administration and development of the cities. These urban local authorities have the primary duty of delivering essential public services and developing infrastructure.

Originally, the Indian Constitution did not explicitly mandate local self-government in urban areas. Although the Directive Principles of State Policy mention village Panchayats, there is no direct mention of Municipalities, except for an implicit reference in **Entry 5 of the State List,** which designates local self-governance as a State responsibility. There are eight types of urban local bodies existing in India - Municipal Corporation, Municipality, Notified Area Committee, Town Area Committee, Cantonment Board, Township, Port Trust, Special Purpose Agency.

At the central level the subject of 'Urban Local Government or Bodies' is looked after by the following three ministries.

In the year 1985, the Ministry of Urban Development (now Ministry of Housing and Urban Affairs) was created as a separate ministry.

- Ministry of Defense in case of Cantonment Boards.
- Ministry of Home Affairs in case of Union Territories.

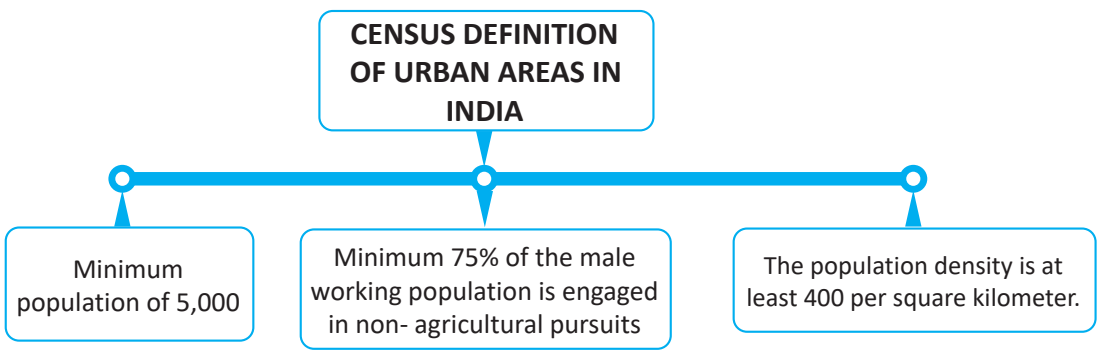
CENSUS DEFINITION OF URBAN AREAS IN INDIA
Minimum population of 5,000
Minimum 75% of the male working population is engaged in non- agricultural pursuits
The population density is at least 400 per square kilometer.

Fig. 29.1: Census Definition of Urban Areas In India

EVOLUTION OF URBAN GOVERNANCE

Urban local governance institutions in modern India have their roots in the period of British rule. Here are the key milestones in this historical context:

- The first municipal corporation in India was established in **Madras in 1688**.
- Municipal corporations were subsequently set up in Bombay and Calcutta in 1726.
- **Lord Mayo's 1870 resolution** on financial decentralization envisioned the growth of local self-government bodies.
- **Lord Ripon's 1882 resolution** is celebrated as the **'Magna Carta' of local self-government**, earning him the title of the father of local self-government in India.
- **The Royal Commission on Decentralisation** was formed in 1907, and presented its report in 1909, with Hobhouse as its chairman.
- The **Government of India Act of 1919** introduced the dyarchial scheme in Provinces, making local self-government a transferred subject under the supervision of a responsible Indian minister.
- In 1924, the Central legislature passed the **Cantonments Act**.
- The **Government of India Act of 1935,** with the introduction of provincial autonomy, declared local self-government a provincial subject.
- After independence, the **65th Constitutional Amendment Bill** (known as the Nagarpalika Bill) was introduced in the Lok Sabha in August 1989 to constitutionalize, strengthen, and reorganize municipal bodies but was not passed by the Rajya Sabha during Rajiv Gandhi's government.
- Eventually, the 65th Constitutional Amendment Bill evolved into the **74th Constitutional Amendment Act of 1992** and became effective on June 1, 1993, during the prime ministership of **P.V. Narasimha Rao.**

IGNITE YOUR MIND

Why British Colonial government transferred local self government to provincial subject list?

74TH AMENDMENT ACT OF 1992

The 74th Constitutional Amendment Act, 1992 (74th CAA) came into effect on **1 June 1993,** and a new Part IX-A (the Municipalities) was also added, which deals with the issues relating to municipalities. The Act provided **constitutional status to the Urban Local Bodies (ULBs).**

Article 243W of the 74th CAA authorised the State Legislatures to enact laws to endow local bodies with powers and authority as necessary to enable them to function as institutions of Self-Government and make provisions for devolution of powers and responsibilities.

Constitutional Status

- The Act added a new section to the Constitution, **known as Part IX-A, titled 'The Municipalities,'** encompassing **Articles 243-P to 243-ZG.**
- It also introduced the **Twelfth Schedule to the Constitution,** comprising eighteen functional items related to municipalities. This schedule is addressed in Article 243-W.
- The Act conferred constitutional status on municipalities, bringing them under **the justiciable part of the Constitution**, which means that State governments are constitutionally obligated to implement the provisions of the Act.

Types of Municipalities

- The Act provides for the establishment of three types of municipalities in every State(Article 243Q):
  - **Nagar Panchayat** for transitional areas.
  - **Municipal Council** for smaller urban areas.
  - **Municipal Corporation** for larger urban areas.

Composition (Article 243R)

- All members of a municipality are to be **directly elected by the residents** of the municipal area, divided into territorial constituencies called **wards.**
- The State legislature can determine the election process for the chairperson of a municipality and the representation of specific individuals in the municipality, including those with expertise in municipal administration and elected representatives at various levels.

Wards Committees (Article 243S)

- Wards committees, consisting of one or more wards, must be established within municipalities with a population of three lakh or more.
- The State legislature can decide the composition and territorial area of these ward committees and the process for filling their seats.

Reservation of Seats (Article 243T)

- The Act mandates the reservation of seats for scheduled castes (SCs) and scheduled tribes (STs) in every municipality **in proportion to their population** in the municipal area.
- It also requires the reservation of not less than one-third of the total seats for women, including women from SCs and STs.
- The State legislature can make provisions for reservations for other backward classes as well.

Duration of Municipalities (Article 243U)

- Municipalities have a standard **five-year term of office**, but they can be dissolved before completing their term. No amendment of any law for the time being in force shall have the effect of causing dissolution of a Municipality at any level, which is functioning immediately before such amendment, till the expiration of its duration.
- Fresh elections to constitute a municipality must be completed either before the expiry of its five-year duration or in case of dissolution, before the expiry of a period of six months from the date of its dissolution.
- If the remaining period for a dissolved municipality is less than six months, no election is required, and the new municipality's term is limited to the remaining period.

Disqualifications (Article 243V)

- A person shall be disqualified from being chosen as a member of a municipality based on specific disqualifications established by State law.
- Age qualifications may not be used to disqualify a person **under 25 years** of age if they have **reached 21 years**.

Powers and Functions (Article 243W)

- The State legislature can empower municipalities with the necessary authority to function as self-governing institutions.
- This includes devolving powers and responsibilities to municipalities concerning economic development, social justice, and the implementation of schemes in various areas listed in the Twelfth Schedule.

State Election Commission (Article 243ZA):

- The State Election Commission is responsible for electoral matters, including the preparation of electoral rolls and the conduct of municipal elections.
- The State legislature can address various aspects of Municipal Elections.

Application to Union Territories (Article 243ZB)

- The Act is applicable to Union territories, with the President having the authority to specify exceptions or modifications for its application in a particular Union territory.

Exempted Areas (Article 243ZC)

- The Act **does not apply to scheduled areas and tribal areas** within the States.
- It shall not affect the functions and powers of the Darjeeling Gorkha Hill Council of West Bengal.
- However, Parliament may extend the provisions of this Act to scheduled and tribal areas with specified exceptions and modifications.

Bar to Court Interference (Article 243 ZG):

- The Act prevents courts from interfering in municipal electoral matters, including the delimitation of constituencies and seat allotment.
- Challenges to municipal elections must be addressed through an election petition presented to the authority and in the manner prescribed by the State legislature.

Twelfth Schedule of the Constitution of India

The following 18 functional items are placed within the purview of municipalities:

1. Urban planning including town planning;
2. Regulation of land use and construction of buildings;
3. Planning for economic and social development;
4. Roads and bridges;
5. Water supply for domestic, industrial, and commercial purposes;
6. Public health, sanitation, conservancy, and solid waste management;
7. Fire services;
8. Urban forestry, protection of the environment, and promotion of ecological aspects;
9. Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded;
10. Slum improvement and upgradation;
11. Urban poverty alleviation;
12. Provision of urban amenities and facilities such as parks, gardens, and playgrounds;
13. Promotion of cultural, educational, and aesthetic aspects;
14. Burials and burial grounds, cremations and cremation grounds, and electric crematoriums;
15. Cattle ponds, prevention of cruelty to animals;
16. Vital statistics including registration of births and deaths;
17. Public amenities including street lighting, parking lots, bus stops, and public conveniences; and
18. Regulation of slaughterhouses and tanneries.

SIGNIFICANCE OF THE 74TH AMENDMENT ACT

- **Economic Growth:** The Act recognizes the significant role that cities and towns play in contributing to the nation's economic growth. Urban areas are hubs for economic activity and also serve as engines for the development of the surrounding rural areas. Thus, strengthening Urban Local Governments is crucial for harnessing their potential.
- **Local Participation:** The Act emphasizes the involvement of local residents and their representatives in the planning and implementation of programs at the grassroots level. This local engagement is essential to align economic progress with the real needs and circumstances of the community. Example: Indore Municipal Corporation turned Swachh Bharat Mission into a Jan Andolan and raced to become India's cleanest City.
- **Democracy at the Local Level:** The Act aims to extend the roots of democracy to towns, villages, and cities, ensuring that people have a say in the governance and development of their localities. This not only enhances local democracy but also contributes to the overall strength and stability of the political system in Parliament and State Legislatures.
- **Professionalization of Municipal Administration:** Some states, including Maharashtra and Gujarat, have taken steps to create a professional cadre for municipal administration, ensuring that qualified individuals are appointed to key positions. This professionalization enhances the efficiency and effectiveness of urban governance.

CRITICAL EVALUATION

- **Empowerment of Urban Local Government:** The 74th Amendment Act was intended to empower urban local governments with decision-making authority, revenue generation capabilities, and financial autonomy. While there has been progress in terms of financial independence, Indian cities still lag behind developed nations, even after more than two decades of the initial reform.
- **Inconsistent Implementation:** The implementation of the 74th Constitutional Amendment Act by State Governments has been inconsistent across the country. Some States, like Kerala and West Bengal, have made more substantial efforts to implement the provisions effectively, while others have fallen short. This variation in implementation has resulted in disparities in the functioning of urban local bodies.

IMPORTANT COMMITTEES UNDER MUNICIPALITIES

District Planning Committee (Article 243ZD)

- **Purpose:** Every State is mandated to establish a District Planning Committee at the district level. The primary purpose of this committee is to consolidate the plans developed by panchayats and municipalities within the district and formulate a comprehensive development plan for the entire district.
- **Composition:** The Legislature of a State may, by law, make provision with respect to
  - The composition of the District Planning Committees;
  - The manner in which the seats in such Committees shall be filled.
  - The Act specifies that **four-fifths (80%) of the committee's members** should be elected by the elected representatives of the district panchayats and municipalities from among themselves. This ensures that the local representatives have a significant say in the planning and development of the district.

Metropolitan Planning Committee

- **Purpose:** For metropolitan areas, which include regions with a **population of 10 lakh (1 million)** or more, spanning multiple districts and comprising two or more municipalities, the Act requires the formation of a Metropolitan Planning Committee. This committee is responsible for drafting a development plan for the entire metropolitan area.
- **Composition:** The Act stipulates that **two-thirds (66.67%) of the members of the Metropolitan** Planning Committee should be elected by the elected representatives of the municipalities and the chairpersons of the panchayats within the metropolitan area, chosen from among themselves. This ensures local representation and involvement in the planning process for significant urban areas.

IGNITE YOUR MIND

Assume that you have a magic wand that can solve one challenge your municipality is facing. What issue would you address, and how would your solution positively impact the residents?

TYPES OF URBAN GOVERNMENTS

The administration of urban areas in India involves 8 types of urban local bodies, each with its own specific purpose and jurisdiction are mentioned below:

- **Municipal Corporation:**
  - Municipal corporations are established for the administration of major cities like **Delhi, Mumbai, Kolkata, Hyderabad,** and others.
  - They are established by State legislatures (in States) or the Parliament of India (in union territories).
  - Municipal corporations have a council, standing committees, and a commissioner as their key authorities.
- **Municipality:**
  - Municipalities are set up for the administration of towns and smaller cities.
  - Like municipal corporations, they are established by State legislatures (in States) or the Parliament of India (in union territories).
  - Municipalities have a council, standing committees, and a chief executive officer.
- **Notified Area Committee:**
  - Notified Area Committees are created for two types of areas: **fast-developing towns due to industrialization and towns** that do not yet meet all the conditions for a municipality but are considered significant by the State government.
  - They are entirely nominated bodies, with all members, including the chairman, nominated by the State government.
- **Town Area Committee:**
  - Town Area Committees are established for the administration of small towns.
  - They are governed by a separate State legislative act and may be wholly elected or wholly nominated, or a combination of both.
- **Cantonment Board:**
  - Cantonment Boards are established for municipal administration in civilian areas within cantonments. They are under the jurisdiction of the Ministry of Defence.
  - They are created and administered by the Central government under the provisions of the **Cantonments Act of 2006**.
  - Cantonment Boards have both elected and nominated members.
- **Township:**
  - Townships are established by large public enterprises to provide civic amenities to their staff and workers residing near the enterprise.
  - Town administrators manage the administration, and there are **no elected member** in this form of urban government.
- **Port Trust:**
  - Port Trusts are set up in port areas, such as Mumbai, Kolkata, and Chennai, to manage and protect the ports while also providing civic amenities.

- Port Trusts are created by an Act of Parliament and consist of both elected and nominated members.

❑ **Special Purpose Agency:**
- Special Purpose Agencies are established to carry out designated activities or **specific functions** that may belong to municipal corporations or municipalities.
- They are function-based and not area-based.
- Examples include town improvement trusts, urban development authorities like HUDA, DDA, etc. water supply and sewerage boards, housing boards, pollution control boards, electricity supply boards, and city transport boards.
- These agencies **operate autonomously** and are responsible for their specific functions independently of other local urban governments. **Example:** Agra Smart City Special Purpose Vehicle is implementing the smart city project independently of Agra Municipal Corporation.

MUNICIPAL REVENUE

Municipal finances in India are supported by various sources of income that enable urban local bodies to fund their operations and development programs. Here are the five primary sources of income for urban local bodies:

❑ **Tax Revenue:** Tax revenue includes income generated from various local taxes imposed by urban local bodies. These taxes encompass Property tax, Entertainment tax, Taxes on advertisements, Professional tax, Water tax, Tax on animals, Lighting tax, Pilgrim tax, Market tax, Toll on new bridges, Cesses (e.g., library cess, education cess, beggary cess)

Note: Octroi, which was a tax on the entry of goods into a local area, has been abolished in most States. Property tax is a significant component of tax revenue.

❑ **Non-Tax Revenue:** Non-tax revenue includes income generated from various sources other than taxes. These sources consist of Rent from municipal properties, Fees and fines, Royalty, Profits and dividends, Interest, User charges (e.g., water charges, sanitation charges, sewerage charges), Miscellaneous receipts, Bonds (e.g. Pune Municipal Corporation recently issued proposed municipal bonds as non-taxable income option)

❑ **Grants:** Grants are financial contributions provided to municipal bodies by both the Central and State Governments. These grants are allocated for a variety of purposes, including development programs, infrastructure schemes, and urban reform initiatives. **Example:** The Fifteenth Finance Commission recommended grants of Rs 1.2 lakh crore for urban local bodies.

❑ **Devolution:** Devolution refers to the transfer of funds from the State government to urban local bodies. The allocation of these funds is typically determined based on the recommendations of the State Finance Commission, which assesses the financial needs of local bodies.

❑ **Loans:** Urban local bodies may raise loans to finance their capital expenditure, such as infrastructure projects. Loans can be obtained from the State government and financial institutions, but their approval usually requires the consent of the State government.

CENTRAL COUNCIL FOR LOCAL GOVERNANCE

The **Central Council of Local Government,** initially **established in 1954 under Article 263** of the Indian Constitution, serves as an advisory body with a focus on local government matters. Initially, the Council dealt with both urban and rural local governments, but it shifted its focus to urban local government matters exclusively after 1958.

❑ **Composition:** The **Minister for Urban Development** in the Government of India, who serves as the Chairman and the Ministers for Local Self-Government in various States as members.

❑ **Functions:**

The Central Council of Local Government performs several functions related to local government:
- Considering and Recommending Policy Matters
- Making Proposals for Legislation
- Recommending and Reviewing Central Financial Assistance

LIMITATIONS

The challenges faced by urban local bodies (ULBs) in India are indeed significant obstacles to effective governance and service delivery such as

❑ **Constrained Financial Resources:** Urban Local Bodies (ULBs) face financial limitations due to their restricted ability to generate revenue, coupled with inadequate tax collection and revenue generation in many urban areas.
- According to the Indian Institute for Human Settlements (IIHS), ULBs' own sources of revenue were less than half of their total revenue, with largely untapped potential (47% of their total revenue).
- As per **RBI report on Municipal Finances**, about **70%** of it gets spent on salaries, pensions, and administrative expenses with the rest left for capital expenditure.

❑ **Autonomy Deficit:** The limited autonomy of ULBs in decision-making, coupled with their reliance on State governments for financial and administrative support, can impede their capacity to respond effectively to the needs and demands of their residents.

- **Multiplicity of Agencies:** In certain States, ambiguity in the functional scope of ULBs and parastatal bodies creates a sense of distance and inaccessibility in municipal governance for citizens.
- **Scarce Human Capital:** ULBs in India often grapple with a shortage of competent and qualified personnel, which can impact their ability to efficiently execute their roles and responsibilities.
- **Inadequate Infrastructure:** Numerous ULBs in India confront infrastructure deficiencies, including roads, water supply, and sewage systems, limiting their ability to furnish essential services to their constituents.
- **Political Meddling:** ULBs in India are frequently subjected to political intervention, potentially compromising their independence and impartiality in decision-making.
- **Limited Civic Engagement:** Many ULBs in India encounter challenges related to inadequate public involvement in decision-making processes, potentially impeding their efficiency and accountability.
- **Capacity Shortage:** A number of ULBs in India lack the capacity to proficiently strategize, execute, and oversee developmental projects and initiatives. This inadequacy can lead to inefficiencies and the squandering of resources.

WAY FORWARD

- **Financial Independence:**
  - **Fiscal Decentralization:** Devolve financial powers and resources to ULBs to reduce their dependence on State governments. Allow them to collect and manage their revenues independently.
- **Strengthening Municipal Revenue:**
  - **Property Tax Reforms:** Implement GIS and digitization to enhance property tax administration, making it more efficient and transparent.
  - **Levy Vacant Land Tax:** Enable municipalities to levy vacant land taxes to generate additional revenue.
- **Better Financial Database:**
  - **Financial Data Maintenance:** Ensure proper maintenance and audit of financial accounts at the local level to create a verifiable financial database that supports performance grant eligibility.
- **Active Citizen Participation:**
  - **Public Consultations:** Organize public consultations, meetings, and public hearings to involve citizens in decision-making processes.
- **Citizen Grievance Redressal Mechanism:**
  - **Technology-Enabled Platform:** Establish an online platform for citizens to register complaints, provide feedback, and track grievance redressal processes.
- **Capacity Building:**
  - **Training and Skill Development:** Invest in training and capacity-building programs for ULB staff to enhance their skills and capabilities.
- **Performance Monitoring:**
  - **Performance Evaluation:** Implement systems for monitoring and evaluating the performance of ULBs, including financial management and service delivery.
- **Resource Mobilization:**
  - **Alternative Funding:** Explore various funding options, including public-private partnerships, bonds, and other innovative financing mechanisms to supplement ULBs' financial resources.
- **Legal and Policy Reforms:**
  - **Enhance Autonomy:** Advocate for greater autonomy for ULBs in decision-making, financial management, and governance.
- **Promoting Civic Engagement:**
  - **Awareness Campaigns:** Conduct awareness campaigns to inform citizens about their rights, responsibilities, and opportunities to engage with local government.
  - **Use of Technology:** Leverage technology, such as mobile apps and social media, to facilitate citizen engagement and provide real-time information.

IGNITE YOUR MIND

If you could design a futuristic mode of transportation for your city, what would it look like, and how would it make getting around easier for everyone, especially children?

- **Transparency and Accountability:**
  - **Open Data Initiatives:** Promote open data initiatives to share information about ULB activities, budgets, and performance.
  - **Citizen Scorecards:** Encourage the development of citizen scorecards to measure ULB performance and identify areas for improvement.

CONCLUSION

One of the goals within the SDGs is SDG 11, which addresses urban development. **Sustainable Development Goal (SDG) 11: Sustainable Cities and Communities,** an effective city government is essential for sustainable development. Cities serve as the **growth engines** of nations, and efficient urban local bodies can comprehensively address the regulatory challenges, acting as a remedy for the existing bureaucratic impediments in urban areas.

Cooperative Societies

30

INTRODUCTION

A Cooperative society is a **democratic organization** controlled by its members, who actively participate in the maintenance of its policy determination and decisions. Members of these societies are usually individuals or smaller organizations, such as farmers, artisans, small businesses, or consumers.

Cooperative societies are governed by the **principles of cooperation, self-help, and mutual assistance,** and they aim to address the common needs and aspirations of their members.

Being democratic in functioning and working for the public welfare, similar to Panchayati Raj Institutions, the Government of India decided to recognize them constitutionally through the **97th Constitutional Amendment Act of 2011.**

Brief History of Cooperatives in India

Pre-Independence phase:

- Cooperative initiatives in India trace their roots back to the **late 19th century,** when efforts were made to alleviate the financial burden on farmers imposed by money lenders.
- In 1901, a **committee chaired by Sir Edward Law** recommended the establishment of Cooperative Credit societies in India.
- The cooperative movement in India gained official recognition with the introduction of the **Cooperative Societies Act in 1904. The Agricultural Credit Cooperative Society** of **Kanaginahal village in Karnataka** was the first cooperative Society formed under this law.
- Cooperative societies were initiated among labourers, and attempts at Cooperative housing were made, particularly in Bombay.
- In 1914, a **committee led by Sir E.D. Maclagan** assessed the situation and proposed significant developments in the movement in its 1915 report.
- The **Government of India Act 1919** made Co-operation a transferred **provincial subject**, placing it under the supervision of a Minister after the conclusion of World War I.

Post-Independence Phase:

- The period following India's independence in 1947 marked a significant turning point, with cooperation being embraced as a tool for planned economic development.
- India's first Prime Minister, Pandit Jawaharlal Nehru, held a deep appreciation for cooperatives and aimed to instil a culture of cooperation throughout the nation. This vision was reflected in the prioritisation of the agricultural sector during the five-year plans, leading to substantial growth of cooperatives in various sectors.
- Today, the Indian cooperative system ranks among the largest globally and stands as a vital pillar supporting the prosperity of agriculture and related sectors.
- In India, **there are around 8.55 lakh cooperative societies** of diverse types, and about 13 crore people are directly associated with them, covering nearly **91 percent villages in the country.**
- This extensive network includes 17 national cooperative societies, 390 State-level federations, 2,705 district federations, and 97,961 Primary Agricultural Societies (PACS) that oversee and guide the cooperative movement across the country. **AMUL, Lijjat Papad, PMC Bank, IFFCO** are few well-known cooperative societies in India.

TYPES OF COOPERATIVE SOCIETIES

- **Consumer Cooperative Society:** These societies cater to consumers seeking household goods at lower prices, obtaining products directly from producers in bulk and selling them to members. Examples include Super Bazar and Apna Bazar.
- **Producer Cooperative Society:** Also known as industrial cooperatives, these societies support small-scale producers, such as farmers, artisans, and herbal medicine producers. Members collaborate on production and distribution, minimising risks and eliminating intermediaries. Examples include dairy, fish farmers, weavers, artisans, and tribal cooperatives.
- **Cooperative Credit Societies:** Urban and rural financial societies that offer low-interest loans to members, serving a crucial banking role. They provide deposit schemes and various loans, supported by government subsidies. Examples include Teachers Co-op Credit Society and the State Electric Board Employee Co-op Credit Society.

- **Marketing Cooperative Society:** Aimed at benefiting farmers, these societies focus on marketing produce at profitable prices, enhancing bargaining power, and protecting farmers from individual selling challenges. They assist in education, grading, pooling, processing, and providing storage and transportation facilities. Examples include Milk Cooperatives in Gujarat, Maha Grape, and Cotton Marketing Cooperatives.
- **Housing Cooperative Society:** Providing affordable housing to middle and low-income groups, members purchase shares in the cooperative instead of owning real estate. These societies construct residences or provide land for members to construct their homes. Common in urban and semi-urban areas.
- **Cooperative Farming Societies:** Addressing the financial challenges of individual farmers, these societies allow farmers to retain land rights while pooling resources for joint cultivation. Cooperative farming can involve joint pre-sowing activities, equipment sharing, and joint selling. Variations include co-op tenant farming and collective farming coops with permanent membership and land rights transfers.

CONSTITUTIONAL PROVISIONS: 97th CONSTITUTIONAL AMENDMENT ACT

The 97th Constitutional Amendment Act of 2011 conferred constitutional status and safeguards upon cooperative societies, and in this context, it introduced **three significant changes** to the Constitution:

- The **phrase 'Cooperative societies' was incorporated into Part III** of Article 19(1)(c) of the Constitution. This vital amendment to Article 19(1)(c) recognizes the people's right to establish cooperative societies as a fundamental right, granting them increased managerial autonomy and operational independence, while also safeguarding them from political interference. It establishes the freedom to create cooperative societies as a fundamental right.
- A new **Article 43B was included in the Directive Principles of State Policy** (Part IV) concerning the 'Promotion of Cooperative Societies.' This article emphasises that the State should strive to encourage the voluntary formation, self-governance, and professional administration of cooperative societies.
- The Amendment **introduced a new Part, IX-B**, to the Constitution, succeeding Part IX-A, titled 'The Cooperative Societies' (comprising Articles 243-ZH to 243-ZT).

This amendment was anticipated to ensure the democratic and autonomous operation of cooperatives, as well as enhance transparency in their management for the benefit of their members and other stakeholders.

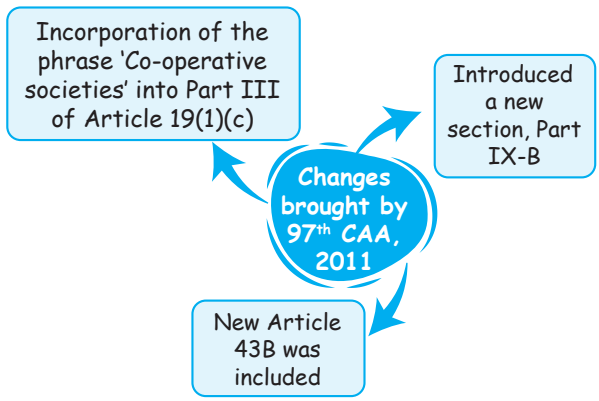
Incorporation of the phrase 'Co-operative societies' into Part III of Article 19(1)(c)
Introduced a new section, Part IX-B
Changes brought by 97th CAA, 2011
New Article 43B was included

Fig. 30.2: Constitutional Provisions: 97th CAA

KEY PROVISIONS OF THE PART IX-B

Definitions of Cooperatives (Article 243 ZH)

- **Cooperative society:** Refers to any society registered or presumed to be registered under the current cooperative society law in any State.
- **Multi-State Cooperative society:** Denotes a group with objectives spanning multiple States, registered or presumed to be registered under the governing law.
- **State-level Cooperative society:** Encompasses a cooperative society whose operational jurisdiction covers the entire State, as determined by the State legislature.

Incorporation of Cooperative Societies (Article 243 ZI)

- State legislatures may enact laws governing the formation, regulation, and dissolution of cooperative societies, adhering to principles like voluntary formation, democratic control, member participation, and autonomous functioning.

Number and Term of Board Members and Office Bearers (Article 243 ZJ)

- The board's size is determined by the State legislature, with a maximum limit of twenty-one directors.
- Mandatory reservation of one seat for Scheduled Castes or Scheduled Tribes and two seats for women in cooperative societies with members from these categories.
- Elected board members and office bearers serve a five-year term from the date of their election.
- The State legislature can co-opt individuals with expertise in banking, management, finance, or related fields as board members, limited to two (in addition to the maximum of twenty-one directors). These co-opted members cannot vote or hold office.

- Functional directors are considered part of the board but are not counted within the total limit of twenty-one directors.

Election of Board Members (Article 243 ZK)

- Board elections are to be held before the current board's term expires, ensuring seamless transition.
- The responsibility for preparing electoral rolls and conducting elections in a cooperative society lies with a body designated by the State legislature.

Supersession and Suspension of Board and Interim Management (Article 243 ZL)

- Boards may be superseded or suspended for up to **six months** under certain conditions, including persistent defaults, negligence in the performance of its duties acts against the cooperative society's interests, constitutional issues, or election-related failures.
- Cooperative societies without government shareholding, loans, financial assistance, or guarantees are exempt from supersession.
- In the event of board supersession, an administrator must arrange elections within six months and transfer management to the elected board.
- **Note:** If a cooperative society is carrying out the **business of banking,** then the provisions of the **Banking Regulation Act, 1949** shall also apply, where the Board can be superseded and suspended for up to **one year**.

Audit of Accounts of Cooperative Societies (Article 243 ZM)

- State legislatures can stipulate the maintenance of accounts by cooperative societies, requiring annual audits.
- Auditors and auditing firms must meet minimum qualifications and experience criteria, approved by the State Government or its authorised body.
- Cooperative societies must undergo audits within six months of the financial year's end.
- Audit reports for apex cooperative societies must be presented to the State legislature.

Convening of General Body Meetings (Article 243 ZN)

- The State legislature can mandate annual general body meetings within six months of the financial year's close.

Promoting transparency in Working (Article ZO)

- Members must have access to the cooperative society's books, information, and accounts, and provisions can be made to ensure their participation in management. Cooperative education and training can also be promoted.

Returns (Article 243 ZP)

- Cooperative societies must submit annual returns to the designated authority within six months of the financial year's end.
- These returns should cover various aspects, including an annual report, audited accounts, surplus disposal plans, by-law amendments, and details on general body meetings and elections.

Offences and Penalties (Article 243 ZQ)

- State legislatures can establish offences and penalties related to cooperative societies, covering aspects such as false reporting, disobedience of orders, non-payment by employers, failure to hand over documents, and corrupt practices during a board or office bearer elections.

Application to Multi-State Cooperative Societies (Article 243 ZR)

- The provisions in this part apply to multi-State cooperative societies, with modifications that replace references to "State Legislature," "State Act," and "State Government" with "Parliament," "Central Act," and "Central Government," respectively.

Application to Union Territories (Article 243 ZS)

- These provisions are applicable to Union territories, but the President may direct not to apply to any Union territory or part thereof via notification.

Continuance of Existing Laws (Article 243 ZT)

- Any existing State laws related to cooperative societies, inconsistent with the provisions of this part, remain in force until amended, repealed, or for a maximum of one year from the commencement of the Constitution (Ninety-seventh Amendment) Act, 2011.

REASONS FOR 97TH CONSTITUTIONAL AMENDMENT

Enhancing Cooperative Sector Performance

- The Cooperative sector **exhibited weaknesses in protecting its members' interests** and achieving its intended objectives. Instances of postponed elections and prolonged terms of nominated office-bearers or administrators reduced accountability in the management of cooperative societies. Thus, to rectify these issues, it was imperative to introduce fundamental reforms that would revitalise these institutions.

Subject Under State Jurisdiction

- "Cooperative societies" falls under **Entry 32 of the State list** in the **Seventh Schedule** of the Constitution. However, despite significant growth, cooperatives have not consistently met the desired qualitative standards. Thus, it became evident that amending the Constitution was necessary to shield cooperatives from undue external interference and ensure their autonomous organisational structure and democratic operation.

Central Government's Commitment to Reform

- The Central Government was committed to ensure that cooperative societies in the country operate in a democratic, professional, autonomous, and financially sustainable manner. In pursuit of these objectives, it was proposed to introduce a new section in the Constitution that would encompass essential provisions governing the functioning of cooperative societies, with a focus on democratic, autonomous, and professional operation.

Organization for the poor, illiterate and unskilled people
Mutual help and sharing.
Reduces the bureaucratic evils & political factions.
Softens the class conflicts
Creates conducive environment for small and cottage industries.

Fig. 30.3: Significance of Cooperatives in INDIA

BENEFITS OF COOPERATIVE SOCIETIES

Economic Benefits of Cooperative Societies

- Cooperative societies provide substantial credit to farmers at affordable rates, reducing dependence on money lenders and promoting fair competition.
- Thrift and self-help habits are fostered among rural communities, with cooperatives educating villagers about banking practices and encouraging the use of banks for productive purposes.
- The cooperative movement addresses rural unemployment by empowering educated youth to form various cooperative societies, improving their economic conditions.

Social Benefits of Cooperative Societies

- Cooperative societies raise awareness about the negative effects of bad habits, promoting consciousness about wasteful expenses on occasions like marriage and religious ceremonies.
- Welfare activities, including provisions for drinking water, drainage, hospitals, and scholarships for higher studies, are undertaken by cooperative societies.
- The cooperative movement fosters a spirit of community living, emphasizing the principle of "all for each and each for all" to promote a sense of unity among people.
- Members of cooperative societies recognize the importance of education, understand its role in cooperative functioning and develop a cooperative social outlook, facilitate dispute resolution through mutual discussions.

Political Benefits of Cooperative Societies

- Cooperative societies, through their election methods and representative selection, contribute to political awareness and democratic practices among the people.
- By promoting local governance and autonomy, cooperatives help in decentralize power and reduce dependency on centralized political systems. This aspect nurtures local leadership and community-driven development.
- Cooperatives can collectively lobby for policies and regulations that benefit their members, thereby influencing political decisions and promoting policies that support sustainable and equitable development.

National Cooperative Development Corporation:

- The National Cooperative Development Corporation (NCDC) is a **statutory Corporation** set up in 1963 under the **National Cooperative Development Corporation Act, 1962**.
- The objectives of NCDC are planning and promoting programmes for production, processing, marketing, storage, export and import of agricultural produce, foodstuffs, industrial goods, livestock and certain other notified commodities and services on cooperative principles and for matters concerned therewith or incidental thereto.

IGNITE YOUR MIND

Can you think of a famous cooperative society in India? What do you find interesting about its history and the impact it had on the community or industry it serves? What are the global best practices in cooperative development and how do you think India can benefit from such global cooperative models?

CHALLENGES IN THE COOPERATIVE SECTOR

- **Legislative and Policy Constraints:** The National Cooperative Policy of 2002 points out legislative and policy constraints that impact the autonomy of cooperatives.
- **Resource Crunch in Agricultural Credit Societies:** A significant challenge in the cooperative sector is the severe resource crunch, particularly affecting agricultural credit societies.
- **Infrastructural Constraints in Rural Areas:** Rural areas face infrastructural constraints, posing challenges to the effective functioning of cooperatives in these regions.
- **Institutional Challenges and Dual Controls:** Issues like the lack of professional management contribute to instances where federal cooperatives compete with primary cooperatives, and dual controls in the financial sector further complicate matters.
- **Lack of Awareness on Rights:** A notable challenge is the lack of awareness among cooperative members regarding their rights and privileges.
- **Political Interference in Management:** Cooperative societies often grapple with political interference in their management, shifting the focus from member-driven to government-driven institutions.
- **Woes in Cooperative Banking Sector:** The cooperative banking sector faces its own set of challenges, with increasing concerns about financial frauds and mismanagement becoming matters of significant concern.

SIGNIFICANCE OF THE 97TH CONSTITUTIONAL AMENDMENT

- **Establish uniform management standards:** The Amendment sought to establish uniform management standards for Cooperative societies and address concerns related to the efficient administration of the country's Cooperative Societies.
- **Foster independent operation:** The primary aim of the Amendment was to foster independent operation for Cooperatives, ensuring that they remain free from undue political influence.
- **Standardise Cooperative laws:** It aspired to standardise Cooperative laws throughout India by enshrining the right to form Cooperatives as a fundamental right within Part III, Article 19 (1) (c) of the Constitution.
- **Representation to SC/ST/Women for the first time:** Representation concerns were addressed through the Act, guaranteeing that each Cooperative society reserves one seat for Scheduled Castes/Scheduled Tribes (SC/ST) and two seats for women on its board.
- **Enhance management accountability:** Beyond ensuring the autonomous and democratic operation of Cooperatives, the provisions incorporated into the Amendment were designed to enhance management accountability to members and other stakeholders while also serving as a deterrent against violations of the law.

CONSTITUTIONAL VALIDITY OF 97TH AMENDMENT

The Amendment faced legal challenges in multiple High Courts across the country, each raising distinct concerns. Two major reasons are mentioned below:

Cooperative Societies Subject to State List

- One key issue was the placement of 'Cooperative Societies' within **Entry 32 of the State List in the Seventh Schedule of the Constitution**. This placement conferred authority to State legislatures for enacting related laws.
- **Article 368(2)** of the Constitution explicitly stipulated that the cooperatives, being in the State list, were exclusively under the jurisdiction of State legislatures, requiring changes to be ratified by at least half of the State legislatures.
- Remarkably, the 97th Amendment's provisions were approved by Parliament without this ratification by states, leading to legal contention.

Misuse of Article 368 by Parliament

- An argument emerged regarding the use of Article 368 of the Constitution, granting Parliament the power to amend the Constitution, for introducing Part IX-B.
- It was suggested that, since local self-government institutions fell within the exclusive purview of State Legislatures, Parliament couldn't have passed legislation concerning them without invoking Article 368.
- This raised questions about the appropriateness of Parliament attempting an indirect encroachment on matters over which the State Legislature had sole jurisdiction.

COURTS OBSERVATION

Gujarat High Court Decision on the 97th Amendment

- The Gujarat High Court issued a verdict **declaring the Act unconstitutional** in the case of **Rajendra N. Shah v. Union of India**. The Court observed that the Amendment placed constraints on the authority of State legislatures, limiting their ability to enact laws regarding Cooperative societies on certain aspects.
- The Gujarat High Court highlighted the Amendment's impact on federalism, a fundamental feature of the Constitution.
- Consequently, the 97th Amendment **Act was ruled unconstitutional** due to its inclusion of Part IX-B without the requisite ratification, which was considered ultra vires. Dissatisfied with this decision, the Union of India swiftly appealed to the Supreme Court.

Supreme Court Ruling on the 97th Amendment Act

2011- Passing of 97th Constitutional Amendment

Act Challenged in various High Courts

Gujarat High Court declared the Act Unconstitutional

Union government challenged decision in Supreme Court

2021-Supreme Court declared few parts of the Act as Unconstitutional

- The Supreme Court **upheld the Gujarat High Court's decision** to invalidate certain provisions of the 97th Amendment Act (Part IX-B) related to the efficient management of Cooperative societies. This decision was **reached by a 2:1 majority**, with one provision inserted concerning the Constitution and the functioning of Cooperative societies.

Analysis of the Supreme Court's ruling

Exclusive State Legislation: As per the Constitution's interpretation, there is a bias in favour of the central government and federal supremacy over State governments. According to this principle, States hold the exclusive authority to legislate on matters reserved solely for them. The court explicitly affirmed that Article 243 ZI clarifies the States' ability to enact laws regarding the formation, regulation, and dissolution of societies under this Act.

Requirement for State Ratification: In cases where an Amendment falls within the purview of Article 368(2), it must also receive approval from at least half of the State legislatures through a resolution before the Amendment's Bill can be presented to the President for approval. The Court observed that the 97th Amendment, which adds to the section on Cooperative Societies, had not undergone such ratification.

"In an age where community involvement and partnerships with civil society are increasingly being recognized as indispensable, there is clearly a growing potential for cooperative development and renewal worldwide."

Mr. Kofi Annan, Former Secretary General, United Nations

Validation of Multi-State Cooperative Societies Provisions: The Court upheld the legitimacy of the provisions governing Multi-State Cooperative Societies, emphasising that Parliament holds authority over them, while State legislatures are responsible for enacting laws pertaining to "Other Cooperative Societies." It clarified that Multi-State Cooperative Societies do not fall under Article 246(3) or Entry 32 of List-2 in the 7th Schedule.

Impact of the Court's Ruling

This decision has been lauded by constitutional experts for reinforcing the principle of federalism, a cornerstone of the Indian Constitution. Although a significant portion of the Amendment was rejected on technical grounds, the necessity of the Amendment cannot be disputed.

It provided Cooperative societies with a proper framework and standards to aspire to, making it a fundamental right to establish such societies with far-reaching implications. However, the Amendment did encroach on the exclusive legislative authority of State Legislatures.

MINISTRY OF COOPERATION

In 2021, the Government of India established a dedicated "Ministry of Cooperation" with the aim of realising the vision of **"Sahakar se Samriddhi"** (Prosperity through Cooperation) and revitalising the cooperative movement.

This new ministry was formed by transferring the existing responsibilities related to cooperation and cooperatives from the erstwhile Ministry of Agriculture, Cooperation, and Farmers Welfare, as per the Cabinet Secretariat's Gazette Notification dated **July 6, 2021.**

Objectives

The Ministry of Cooperation was set up with the following objectives:

- To create a distinct administrative, legal, and policy framework aimed at strengthening the cooperative movement in the country.
- To foster the growth of cooperatives as a genuine people-centric movement, reaching down to the grassroots level, and cultivating a cooperative-based economic model where each member acts with a sense of responsibility.
- To streamline processes, facilitate "Ease of Doing Business" for cooperatives and promote the development of Multi-State Cooperative Societies.
- To focus on enhancing transparency, modernization, computerization, fostering competitive cooperatives, and consistently working to provide development opportunities for the underprivileged in rural areas. The ministry also aims to connect every village with cooperatives, thereby promoting prosperity with the guiding principle of "Sahakar se Samriddhi," ultimately contributing to the nation's prosperity.

Criticism: Some experts have criticized the establishment of the Ministry of Cooperation, which are as follows:

- **Duplication of efforts:** Critics argue that the creation of a separate ministry for cooperation is unnecessary, as there are already existing ministries and departments dealing with cooperative matters. They argue that the new ministry will simply duplicate the efforts of these existing bodies and lead to increased bureaucracy.
- **Federal Issue:** Critics also argue that the creation of the Ministry of Cooperation will lead to the centralization of power in the hands of the central government. Since Cooperative societies fall under the purview of the State List in the Seventh Schedule of the Constitution, creating such a central-level ministry could potentially consolidate power within the Union government.
- **Politicization of cooperatives:** Critics also fear that the Ministry of Cooperation will politicize cooperative societies, which are traditionally non-political organizations. They argue that this could lead to the misuse of cooperatives for political purposes.
- **Unclear role and objectives:** Critics also argue that the role and objectives of the Ministry of Cooperation are unclear. They argue that the ministry's mandate is vague and that it is not clear what it will actually do.
- **Funding concerns:** Critics also argue that the creation of the Ministry of Cooperation will lead to increased government spending. They argue that the ministry will require significant funding, which could take away from other important government programs.

CONCLUSION

Cooperative societies play a vital role in India's socio-economic landscape, fostering community spirit and collective empowerment among members. While cooperative societies fall under the State List, the establishment of a central ministry has sparked debates about power distribution. Collaborative efforts between central and state governments are crucial for further sector improvement and grassroots prosperity.

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